Jeff. Davis

SUPREME COURT OF THE UNITED STATES.

No. 351. 1585

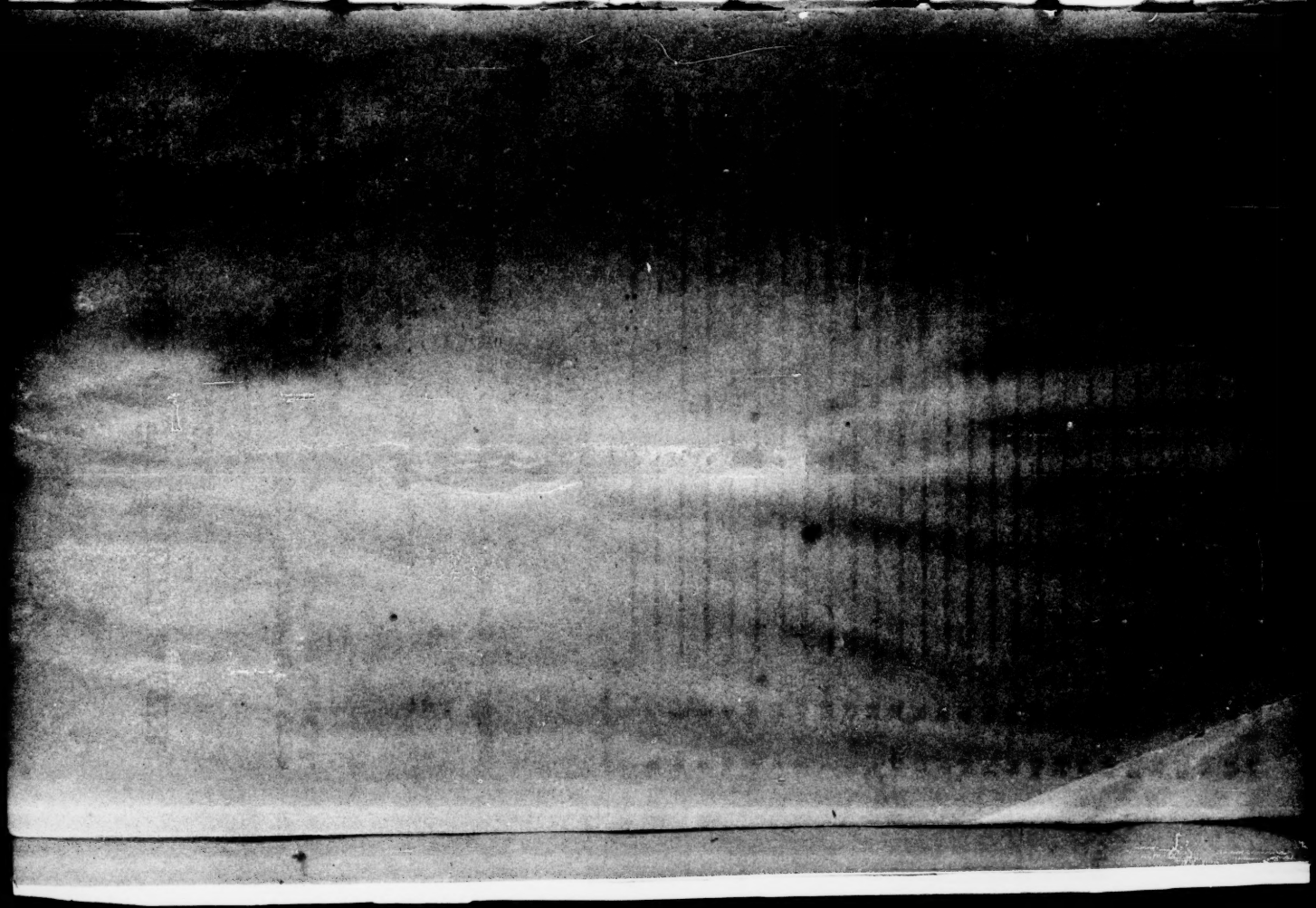
WILLIAM WATSON, WALTER MAGEE, WILLIAM LOESCHIGH, OTTO WISSENBRUCK, GUSTAVUS RUTTER, AND EDWARD LUCKENBACH, APPELLANTS,

vs.

GEORGE A. SUTHERLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.



SUPREME COURT OF THE UNITED STATES.

No. 251.

WILLIAM WATSON, WALTER MAGEE, WILLIAM LOESCHIGH, OTTO WIESENDONCK, GUSTAVUS RUTTER, AND EDWARD LUCKENMEYER, APPELLANTS,

vs.

GEORGE A. SUTHERLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable William F. Giles, judge of Maryland district; William Price, esquire, attorney; Washington Bonifant, esq., marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON AND WALTER MAGEE, WILLIAM LOESchigh, Otto Wiesendonck, Gustavus Rutter, and Edward Luckenmeyer.

Be it remembered, that heretofore, to wit, on the 14th day of December, in the year of our Lord one thousand eight hundred and sixty-three, the said George A. Sutherland, by Thomas S. Alexander, S. Teackle Wallis, and John H. Thomas, esquires, his solicitors, filed in the circuit court here (on the equity side thereof) his bill of complaint against the said William Watson and Walter Magee, William Loeschigh, Otto Wiesendonck, Gustavus Rutter, and Edward Luckenmeyer, in the words and of the tenor follow-

2 ing, to wit:

Bill.

To the honorable the judges of the circuit court of the United States for the district of Maryland:

George A. Sutherland, of the city of Baltimore, a citizen of Maryland, brings this his bill against William Watson and Walter Magee, citizens of the State of New York; and William Loeschigh, Otto Wiesendonck, Gustavus Rutter, and Edward Luckenmeyer, also citizens of the State of New York.

And your orator complaining, respectfully represents to your honors that the said William Watson and Walter Magee having obtained judgment in this honorable court at the April term, 1863, for $5,475 95-100, with interest from 8th November, 1862, and costs, against a certain William G. Wroth and Robert B. Fullerton; and the said William Loeschigh, Otto Wiesendonck, Gustavus Kutter, and Edward Luckenmeyer having obtained judgment in this court against the said Wroth & Fullerton, at the November term of 1863 for $2,208 49-100, with interest from Jan'y 7th, 1863, and costs, as will appear by the memorandum of this honorable court, herewith filed, marked No. 1, have respectfully caused to be issued out of this court writs of fieri facias upon the said judgments, and placed them in the hands of Washington Boni-

fant, esq., the marshal of the U. S. for this district, to be executed,

3 and combining and confederating therefor, have ordered and directed the said marshal to lay the same upon the merchandise and property, constituting the whole stock in trade of your orators, (who is a retail dry-goods merchant,) and being found in your orator's store, No. 85 West Baltimore street, in the city of Baltimore, which levy and seizure the said Bonifant being indemnified therefor, hath accordingly made, and is now in possession of the said merchandise and property.

Now your orator avers and charges that he is the sole and exclusive owner of the said merchandise and property, and so was at the time of the issuing of the writs aforesaid, and each of them, and that the said Wroth & Fullerton then were, and now are, without any interest whatsoever in the

same or any part thereof, directly or indirectly, and that the said property and merchandise of your orator, by color of the said writs, has been illegally, inequitably, and most unjustly seized, and now is held and detained.

Your orator further avers and charges that he has been engaged as a retail dry-goods merchant, in business in the said city, at his said store, No. 85 West Baltimore street, on his own sole account, since the month of October, 1862, and by his industry and attention to business has succeeded in establishing for himself a profitable and increasing trade; that his stock so seized and taken, to the value of $20,000 or thereabouts, and accumulated
4 with a view to the business of the season now current, was purchased by him in New York and Philadelphia, for the most part if not altogether, and is not yet all paid for, the credit therefor not having expired; that for his means of paying for the same so far as unpaid for, your orator is dependent upon his sales, and if the said property be taken from him, or the sale thereof long hindered or interferred with, your orator must not only be rendered insolvent, but the credit which he has established for himself must be destroyed, his business wholly broken up, and his pursuits in life, as a young man, be for the present if not utterly blasted.

Your orator respectfully further asserts and charges that the injury that will thus be done him, if the wrong already referred to be carried out, must be irreparable to him, in the nature of things, and wholly incapable of compensation by damages at law, under the rules of courts of law applicable to claims of damage for trespass to personal property; especially, too, as the said plaintiffs to the said suits are non-residents, without the reach of process of the courts of this district and State, and your orator has no reason to know or believe that the said marshal is pecuniarily sufficient for the large amount of damages which, at the least, he would be entitled to recover for so serious an injury.

Forasmuch, then, as your orator must go without redress unless
5 your honors will be pleased to interfere in his behalf by the preventive process of this court, and under the authority of your honors to arrest and enjoin the commission of wrong and injury by abuse of process issuable in suits at law, and that the said William Watson, Walter Magee, William Loeschigh, Otto Wiesdonck, Gustavus Kutter, and Edward Luckenmeyer may answer the premises and may be enjoined from prosecuting the said writs of fieri facias, or either of them, against the property and merchandise aforesaid in the store of your orator at No. 85 West Baltimore street, and from intermeddling or causing the said marshal of the U. S. for this district to intermeddle with the same, in any way, till your honors further order, and that your orator may have such other and further relief as his case may require, may it please your honors to grant to your orator the writ of injunction, directed to the said William Watson and Walter Magee, and to the said William Loeschigh, Otto Wiesendonck, Gustavus Kutter, and Edward Luckenmeyer, injoining and prohibiting them from further prosecuting the said writs of fieri facias, or either of them, against the goods, wares, and merchandise in the store No. 85 West Baltimore street, owned as aforesaid and claimed by your orator, and from intermeddling with the same, or causing the same to be further intermeddled with by the said marshal of this district, or any of his deputies, under the said writs, or either of them, or by
6 pretext or on account thereof, till the further order of your honors.

And your orator respectfully represents to your honors that he hath not made the said marshal of the United States a party to these proceedings, lest his being a resident of the State of Maryland might prevent the jurisdiction of your honor in his regard, and because he believes that the authority of your honors over the said marshal, as an officer of this court, suffices to establish the equities of your orator against him in the premises

wherewith his connection is simply official, and in which he has no personal interest.

Wherefore your orator further prays the writ of subpœna to be directed to the said William Watson, Walter Magee, William Loeschigh, Otto Wiesendonck, Gustavus Kutter, and Edward Luckenmeyer, commanding them to appear and answer, and that substituted service thereof may be made upon Patrick McLaughlin, esquire, one of the attorneys of this court, who appears to the record of the said suits at law, whenever said suits have been issued, as the attorney of the said parties, and by whose order and direction said writs have been issued, and the service of the same upon your orator's property and merchandise aforesaid has been ordered and superintended.

And your orator will ever, &c.

7 TH. S. ALEXANDER,
WALLIS & THOMAS,
Sol's of Compl't.

DISTRICT OF MARYLAND, *sct:*

Before the subscriber, a commissioner of the U. S. for the district aforesaid, personally appeared this twelfth day of December, 1863, George A. Sutherland, and made oath that the matters and facts set forth in the aforegoing bill are true as therein stated.

JOHN HANAN, *U. S. Commissioner for Md.*

EXHIBIT No. 1.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

In circuit court, U. S., April term, 1864.

WILLIAM WATSON, WALTER MAGEE,
vs.
WILLIAM G. WROTH, ROBERT B. FULLERTON.

3d fi. fa., dama., $10,000; costs, $31 10; add'l, $3

To be released on payment of $5,475 95, with interest from 8 Nov., 1862, and costs. Judgment, 8 Nov., 1862.

WILLIAM LOESCHIGH, OTTO WIESENDONCK, GUSTAVUS KUTTER, AND EDWARD LUCKENMEYER
vs.
SAME.

3d fi. fa., dama., $5,000; costs, $11 55; add'l, $3.

8 To be released on payment of $2,208 49, with interest from 7 January, 1863, and costs. Judg't, 14 Jan'y, 1863:

Whereupon the court passed the following order, to wit: Ordered by the court this 12th day of December, 1863, that the motion for an injunction in this cause stand for hearing on Tuesday, the 15th instant, provided a copy of the bill and of this order be served on the defendants or their attorney, Patrick McLaughlin, esq., on or before Monday, the 14th inst.

WILLIAM F. GILES.

Whereupon, on the same day, the writ of the United States of America of subpœna was issued out of the circuit court here, to the said defendants directed, in the words and of the tenor following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To William Watson, Walter Magee, William Loeschigh, Otto Wiesendonck, Gustavus Kutter, and Edward Luchenmeyer, greeting:

You are hereby commanded that, all excuses and delays set aside, you be

and appear before the judges of the circuit court of the United States for the 4th circuit, in and for Maryland district, at the clerk's office, at the United States court-room, in the city of Baltimore, on the first Monday in January next, to answer unto the bill of complaint of George H. Sutherland,
9 a citizen of the State of Maryland, in the said court exhibited against you. Hereof you are not to fail at your peril. And have you then and there this writ. Witness the Honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.] THO. SPICER, *Clk Cir. Ct.*

Issued 14 Dec'r, 1863.

W. & T.

Return.

Summoned by admission of P. McLaughlin.

WASH. BONIFANT, *Marshal.*

Which said writ has the following endorsement:

Mr. Spicer: Enter my appearance for defendants.

P. McLAUGHLIN.

Afterwards, to wit, on the fifteenth day of December, in the year aforesaid, the said complainant, by his solicitors aforesaid, filed in the circuit court here the following admission of service, to wit:

Admission.

In the circuit court of the U. S. for the dist. of Maryland.

GEORGE A. SUTHERLAND
vs.
WATSON, MAGEE, LOESCHIGH, AND OTHERS.

I hereby acknowledge a copy of bill for injunction and order of court thereon.

Baltimore, Dec'r 14, 1863.

P. McLAUGHLIN.

10 On the same day, to wit, on the 15th day of December, in the year aforesaid, the circuit court here made and passed the following order, to wit:

Order.

Ordered by the court this fifteenth day of December, 1863, that injunction issue as prayed, to be served on Patrick McLaughlin, esquire, upon the complainant's filing with the clerk a bond, with the usual conditions and sufficient sureties, to be approved by the court, in the penalty of $16,000, with leave to the defendants to move to dissolve upon two days' notice to the complainant or his solicitors.

WILLIAM F. GILES.

Afterwards, to wit, on the 16th day of December, in the year last aforesaid, the complainant, by his said solicitors, in compliance with the foregoing order, filed in the circuit court here the following bond, to wit:

Injunction bond.

Know all men by these presents that we, George A. Sutherland, Thomas L. Hall, and Isaac Hartman, are held and firmly bound unto William Watson, Walter Magee, William Loeschigh, Otto Wiesendonck, Gustavus Kutter, and Edward Luchenmeyer, of the State of New York, in the full and

just sum of $16,000, to which payment, well and truly to be made,
11 we and each of us do bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents. Signed and sealed this 15th day of December, 1863.

Whereas, by an order of the circuit court of the U. S. for the district of Maryland, passed in a cause wherein the said George A. Sutherland is complainant and the said Watson, Magee, Loeschigh, Wiesendonck, Kutter, and Luckenmeyer are defendants, an injunction is about to issue to restrain the said defendants as prayed in the bill in the said cause exhibited, upon the said Sutherland's filing a bond, with sufficient sureties, in the above penalty:

Now the condition of the said obligation is such that if the said Sutherland do and shall prosecute the said injunction with effect, and satisfy and save harmless the said defendants if the same be not prosecuted with effect, and in such case pay all costs and damages that may be occasioned by the issuing thereof, and shall in all things obey and fulfil such decrees and orders as shall be made in the premises, then the above obligation to be void; otherwise of full force and virtue.

GEORGE A. SUTHERLAND. [SEAL.]
THOMAS L. HALL. [SEAL.]
ISAAC HARTMAN. [SEAL.]

Witness: I. G. FITZPATRICK.

Which said bond is thus endorsed, to wit:

TOWSONTOWN, *Dec.* 15, 1864.

12 I believe the security, Thomas L. Hall, to be worth ten thousand dollars.

JOHN T. ENSOR.

Bond approved Dec. 16, 1863.

WILLIAM F. GILES.

And on the same day, to wit, the 16th day of December, in the year last aforesaid, the writ of injunction was accordingly issued.

And on the same day, to wit, on the 16th day of December, in the year last aforesaid, the said defendants appear in court here, by Patrick McLaughlin, esquire, their solicitor.

And afterwards, to wit, the second day of April, in the year of our Lord one thousand eight hundred and sixty-four, the following order was filed in court here by the complainant, by his solicitors, to wit:

In the circuit court of the U. S., dist. of Md.

SUTHERLAND
vs.
WATSON, MAGEE, AND OTHERS. } In equity.

Mr. Chew: Please enter a decree *pro confesso* in this cause.

TH. S. ALEXANDER,
S. T. WALLIS,
Sol's for Compl't.

Whereupon, on the said 2d day of April, in the year last aforesaid,
13 decree *pro confesso* was entered accordingly.

Afterwards, to wit, on the 18th day of April, in the year last aforesaid, the complainant, by his solicitor, filed in the court here the following motion, to wit:

Motion.

Circuit court of the U. S. for Md. dist.

SUTHERLAND
vs.
WATSON AND OTHERS. } In equity.

The complainant moves the court to proceed to final decree in this cause. April 10, 1864.

THOS. S. ALEXANDER,
S. T. WALLIS,
Sol's for Compl't.

And on the same day, to wit, the 18th day of April, in the year last aforesaid, the circuit court here enlarged the time to answer until Thursday, the 21st inst.

Afterwards, to wit, on the 22d day of May, in the year last aforesaid, the circuit court here passed the following order, to wit:

Order striking out decree pro confesso, &c.

In the circuit court of the U. S., dist. of Maryland, April term, 1864.

SUTHERLAND
vs.
WATSON AND OTHERS. } In equity.

14 Ordered by the court this 22d day of April, 1864, that the decree *pro confesso* heretofore taken in this cause be, and the same is hereby, stricken out and annulled, and that the defendants have leave to file their answers and take testimony to support their case; provided, however, that the same be returned to this court on or before the 16th day of May next, and that the said cause stand for hearing on that day unless further time be required by the complainant.

WILLIAM F. GILES.

And on the same day, to wit, on the 22d day of April, in the year last aforesaid, the said William Watson and Walter Magee, William Loeschigh, and Otto Wiesendonck, Gustavus Kutter, and Edward Luckenmeyer, by their solicitor aforesaid, filed in the circuit court here their answers to the said bill of complaint against them filed, in the words and of the tenor following, to wit:

Answer of William Watson and Walter Magee.

The answer of William Watson and Walter Magee to the bill of complaint of George A. Sutherland against them and others, in the circuit court of the United States for the district of Maryland, exhibited.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception
15 to the manifold errors, uncertainties, imperfections, and insufficiencies in the said complainant's said bill of complaint contained, for answer thereunto or to so much thereof as they, these defendants, are advised is material for them, these defendants, to make answer unto, answering say, that they admit it to be true that judgments were rendered on the law side of this hon. court against a certain William G. Wroth and Robert B. Fullerton, as alleged in the said complainant's bill of complaint, on contracts entered into by said Wroth & Fullerton before the 10th day of May, 1861.

These defendants also admit that they caused to be issued on said judgments writs of *fieri facias*, directed to Washington Bonifant, marshal of the

district aforesaid, and caused the same to be placed in his hands, and directed him to levy said writs on sufficient of the merchandise and property in store No. 85 W. Baltimore street, in the city of Baltimore, to satisfy said judgments and the costs of said levy, and also that he, the said marshal, took into his possession sufficient of the goods and merchandise in said store to satisfy said judgments.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said marshal did not remove the
16 goods and merchandise so levied on from said store, but on the contrary thereof he suffered said goods to remain in said store, and suffered the complainant or those acting under his directions to continue to sell the same as if the said goods had not been levied on, only requiring that the proceeds of the sales should be placed in the hands of the deputy marshal.

These defendants, further answering, say that they are informed and believe, and therefore admit, that the stock of goods in said store at the time of the making of said levy was worth $20,000, and, perhaps, upwards of that amount, but as to whether the complainant had any other stock in trade than those in said store, which these defendants deny were his, and whether or not the complainant succeeded in establishing for himself a profitable and increasing trade before the levy of said executions, these defendants are unable to admit or deny, as they have no knowledge in reference thereto.

These defendants, further answering, say that they are informed and believe that at the time of the making of said levy the said complainant was acting as a retail dry-goods merchant, but they deny that the stock of goods in the possession of said complainant was his property, and they further deny that the profits of the business in which the said complainant was engaged were for his own use and benefit.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the goods levied upon as aforesaid
17 were not the property of the complainant, but that they were at the time of the making of said levy the property of said William G. Wroth.

These defendants, further answering, say that they have no knowledge of the place or places in which the goods in said store No. 85 W. Baltimore street, at the time of the making of said levy, were purchased, but they are informed and believe, and therefore aver, that by far the greater part of said goods, if not the whole of them, were paid for at the time of making of said levy, and if any portion of the price of said goods was unpaid at the time of the making of said levy, these defendants have no knowledge thereof.

These defendants, further answering, say that they are unable to admit or deny the effect the levy of said goods and their detention and sale might have on the condition and future prospects of the complainant, or whether the said levy and detention and sale might bring about his insolvency, or of the means by which he expected to pay for such of said goods as were not paid for at the time of the making of said levy, or how far he was dependent on the proceeds of the sales he expected to make of the goods so levied on to pay his debts, as they have no knowledge whatever on these matters.

These defendants, further answering, say that they are advised and believe, and therefore aver, that there is no reason to suppose that the
18 levy aforesaid, as made by the marshal, would work to the complainant's irreparable injury, even if the goods so levied on were the property of said complainant, as they informed and believe, and therefore aver that property of the same description and of the same quantity and quality as that so levied on could be easily obtained in market and would suit his

purpose as well as those so levied upon, and that a jury would have ample power, on a trial at common law, in an action either against these respondents or against the marshal, or on the official bond of the said marshal, if they found the complainant had sustained injury by the levy aforesaid, to give him a verdict commensurate with any damages that they, on the evidence, could believe he would sustain by the levy and sale of the goods so levied upon.

These respondents, further answering, say that they admit it to be true that they are not residents of the State of Maryland and that neither of them resides therein; but they are advised and believe, and therefore aver, that the fact of their being non-residents will not give a court of equity jurisdiction of this cause.

These respondents, further answering, say that they are informed and believe, and therefore aver, that the said marshal is pecuniarily sufficient and able to respond and pay any reasonable amount of damages the com-
19 plainant could hope to recover in an action against him for the making of the levy aforesaid, even if the complainant succeeds in showing that the goods so levied upon were his property at the time of the making of said levy.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said marshal has given a bond, with approved security, in the penal sum of $20,000, which, independently of all others, is ample security for any damage which would result to the complainant by the levy of said goods and their sale, sufficient to satisfy said two writs mentioned in said bill of complaint.

These respondents, further answering, say that they are informed and believe, and therefore aver, that the complainant is a young man, who came to this country from Ireland a few years ago; that when he came to this country, it may be said, he was penniless; that since he came to this country he has been employed as a salesman in retail dry-goods stores in the city of Baltimore, at a low salary, so low as to have rendered it impossible for him to have saved from his earnings any considerable sum of money before the time of the making of the purchase hereinafter mentioned, pretended to have been made by him from said Wroth & Fullerton.

These respondents, further answering, say that they are informed and believe, and therefore aver, that said Wroth & Fullerton suspended pay-
20 ment of their debts in the month of March, 1861, and that at the time they so suspended payment they had on hand a stock of dry-goods worth from sixty to seventy thousand dollars and book accounts worth from twenty-five to thirty thousand dollars, and were indebted to the amount of about eighty or eighty-five thousand dollars.

These defendants, further answering, say that they are informed and advised, and therefore believe, that by certain acts of assembly passed by the legislature of Maryland that execution was stayed from the 10th day of May, 1861, until the first day of November, 1862, on judgment rendered on contracts entered before the 10th of May, 1861, but if payment was made of 1-5 of the debt and principal and interest on or before the 1st day of November, 1862, a further stay of execution was given.

These defendants, further answering, say that they are informed and believe, and therefore aver, that previous to the 1st day of November, 1862, the said Wroth & Fullerton had determined to pay no part of any of the judgments rendered against them, and that a great number of judgments had been rendered against them from the 10th of May, 1861, until the 1st of November, 1862, amounting in all to between thirty and forty thousand dollars.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said Wroth & Fullerton suspended
21 payment in the month of March, 1861; that from the day of their sus-

pension of payment as aforesaid until the 27th of October, 1862, they sold the greater portion of said goods and collected a great many of said debts, amounting to a very large sum, and paid only a very small portion thereof to their creditors, but retained the greater portion thereof and secreted the same for their own use and benefit, with a portion of which, or with the proceeds of a portion thereof, the goods so levied upon were paid for.

These defendants, further answering, say that they are informed and believe, and therefore aver, that at the time of the making of said purchase by the complainant from said Wroth & Fullerton he had knowledge that the said Wroth & Fullerton had suspended payments as aforesaid; that the judgments aforesaid, or a great many of them, had been rendered against them; and that the stay law would not protect the said Wroth & Fullerton after the 1st day of November, 1862, unless they paid one fifth thereof with interest and costs, and that they did not intend to do so.

These defendants, further answering, say that they are informed and believe, and therefore aver, that on or about the 27th day of October, 1862, the said complainant, having full notice of the matters aforesaid, conspired with said Wroth & Fullerton to aid them to hinder, delay, and defraud
22 the creditors of said Wroth & Fullerton of their just and lawful debts, claims, and actions, and that in part execution of said conspiracy the said complainant made the purchase aforesaid from said Wroth & Fullerton of their stock of merchandise, and opened a store at No. 85 W. Baltimore street aforesaid.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the goods purchased as aforesaid by the complainant from said Wroth & Fullerton cost him between four and five thousand dollars, and that the whole amount of money which the said complainant claimed then to have been worth at that time was an amount of between fifteen hundred and two thousand dollars.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said purchase from said Wroth & Fullerton by the said complainant was not made by said complainant for his own use and benefit, but for the use and benefit of said William G. Wroth, in whole or for a great portion thereof, and from the time of the purchase aforesaid until the time of the filing of the said bill of complaint, the said complainant has been conducting the business of said store for the use and benefit of said William G. Wroth, and at the time the marshal levied upon the goods at the store No. 85 W. Baltimore street as aforesaid, the goods so levied upon were not the property of the complainant, but were the property of said
23 William G. Wroth, and that the complainant made said purchase from said Wroth & Fullerton, and allows himself to be held out as the proprietor of said business and as the owner of the goods so levied upon, for the purpose of shielding and protecting the goods of said William G. Wroth from the creditors of said Wroth & Fullerton, and with the view, intent, and purpose of hindering, delaying, and defrauding them of their just actions, claims, and debts.

And these defendants, further answering, say they deny all and all manner of unlawful combination and confederacy in the said complainant's said bill of complaint charged, and pray that the injunction heretofore granted in this cause may be dissolved and that they may be hence dismissed with their reasonable costs in this cause sustained. And, as in duty bound, they will ever pray.

WM. WATSON.
WALTER MAGEE.

PATRICK MCLAUGHLIN,
Sol. for Defendants named in this Answer.

REC. 251—2

STATE OF NEW YORK, *City of New York, sct:*

I hereby certify that on this 20th day of April, in the year eighteen hundred and sixty-four, before me, the subscriber, a commissioner of the United States for the 2d circuit and southern district of New York, personally appeared William Watson and Walter Magee, and made oath on the
24 Holy Evangely of Almighty God that the matters stated in the foregoing answer are true as stated, according to the best of their information, knowledge, and belief.

In testimony whereof, I hereunto subscribe my name and affix my official seal on the day and year aforesaid.

[SEAL.] ED. F. BETTS, *U. S. Com'r, &c.*

Answer of William Loeschigh and Otto Weisendonck.

The answer of William Loeschigh and Otto Weisendonck to the bill of complaint of George A. Sutherland against them and others, in the circuit court of the United States for the district of Maryland.

These defendants, answering said bill of complaint contained, for answer thereto say that they are partners of Gustavus Kutter and Edward Luckemeyer, and have been such for the last five years.

These defendants, further answering, say that at the time of making the levy mentioned in said bill of complaint they were absent in Europe, and had no knowledge in reference thereto, but they now adopt the actions of their said co-partners in reference to said levy, and they also adopt their answer filed herewith.

25 These defendants therefore pray that the injunction heretofore issued in this cause may be dissolved, and that they may be hence dismissed with their reasonable costs by them sustained.

PATRICK McLAUGHLIN, *Sol. for Defendants.*

Answer of Gustavus Kutter and Edward Luckemeyer.

The answer of Gustavus Kutter and Edward Luckemeyer to the bill of complaint of George A. Sutherland against them and others, in the circuit court of the United States for the district of Maryland exhibited:

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the manifold errors, incertainties, imperfections, and insufficiencies in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as they, these defendants, are advised it is material for them to make answer unto, answering say that they aver that they are now and have been for the last five years partners of the defendants William Loeschigh and Otto Weisendonck, trading under the name of Loeschigh,
26 Weisendonck & Co., and they admit that as partners trading as aforesaid they obtained judgments against William G. Wroth and Robert B. Fullerton, partners, trading under the name of Wroth & Fullerton, as alleged in said bill of complaint.

These defendants also admit that they caused to be issued on said judgments writs of fieri facias, directed to Washington Bonifant, marshal of the district aforesaid, and caused the same to be placed in his hands, and directed him to levy said writs on sufficient of merchandise and property in store No. 85 W. Baltimore street, in the city of Baltimore, to satisfy said judgments and the costs of said levy; and also that he, the said marshal, took into his possession sufficient of the goods and merchandise in said store to satisfy said judgments.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said marshal did not remove the goods and merchandise so levied on from said store, but on the contrary thereof, they suffered said goods to remain in said store, and suffered the complainant, or those acting under his directions, to continue to sell the same as if the said goods had not been levied on, only requiring that the proceeds of the sales should be placed in the hands of the deputy marshal.

These defendants, further answering, say that they are informed and believe, and therefore admit, that the stock of goods in said store at the
27 time of making said levy was worth $20,000, and perhaps upwards of that amount, but as to whether the complainant had any other stock in trade other than the goods in said store, which these defendants deny were his, and whether or not the complainant succeeded in establishing for himself a profitable and increasing trade before the levy of said executions these defendants are unable to admit or deny, as they have no knowledge in reference thereto.

These defendants, further answering, say that at the time of the issuing of said fieri facias and making of said levy on the judgments aforesaid in favor of these defendants and their said partners, that the said William Loeschigh and Otto Weisendonck were absent in Europe and were not consulted in reference to the making of said levy, and have not since had the opportunity of approving or disapproving of the making of said levy.

These defendants, further answering, say that they are informed and believe, and therefore aver, that at the time of the making of said levy the complainant was acting as a retail dry-goods merchant, but they deny that the stock of goods in his possession were his property, and they further deny that at the time last above mentioned the profits of the business in which he was then engaged were for his own use and benefit.

These defendants, further answering, say that they are informed
28 and believe, and therefore aver, that the goods levied on as aforesaid were not the property of the complainant, but that they were, at the time of the making of said levy, the property of said William G. Wroth.

These defendants, further answering, say that they have no knowledge of the place or places in which the goods in said store No. 85 West Baltimore street, at the time of the making of said levy, were purchased; but they are informed and believe, and therefore aver, that by far the greater part, if not the whole, was paid for at the time of the making of said levy, and if any portion of the price of the said goods was unpaid at the time of the making of said levy these defendants have no knowledge of the amount thereof.

These defendants, further answering, say that they are unable to admit or deny the effect the levy of the said goods and their detention and sale might have on the complainant's condition and future prospects, or whether the said levy and detention and sale might bring his insolvency, or of the means by which he expected to pay such of said goods as were not paid for at the time of the making of said levy, or how far he was dependant on the proceeds of the sales he expected to make of the goods so levied on to pay his debts, as they have no knowledge whatever on these matters.

29 These defendants, further answering, say that they are advised and believe, and therefore aver, that there is no reason to suppose that the levy aforesaid, as made by the marshal, would work to the complainant irreparable injury, even if the goods so levied upon were his property, as they are informed and believe, and therefore aver that property of the same description and of the same quantity and quality as that so levied upon could be easily obtained in market and would suit his purpose as well as those so levied upon, and that a jury would have ample power, on a trial at common law, in an action either against these respondents or against the marshal, or

on the official bond of the marshal, if they found the complainant had sustained injury by the levy aforesaid, to give him a verdict commensurate with any damages that they, on the evidence, could believe he would sustain by the levy and sale of the goods so levied upon.

These respondents, further answering, say that they admit it to be true that they are not residents of the State of Maryland, and that neither of them resides therein, but they are advised and believe, and therefore aver, that the fact of their being non-residents will not give a court of equity jurisdiction of this cause.

These respondents, further answering, say that they are informed and believe, and therefore aver, that the said marshal is pecuniarily sufficient
30 and able to respond and pay any reasonable amount of damages the complainant could hope to recover on an action against him for the levy aforesaid, even if he succeeded in showing that the goods so levied on were his property at the time of the making of said levy.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said marshal has given a bond, with approved security, in the penal sum of $20,000, which, independently of all others, is ample security for any damages which would result to the complainant by the levy of said goods and their sale sufficient to satisfy said two writs mentioned in said bill of complaint.

These respondents, further answering, say that they are informed and believe, and therefore aver, that the complainant is a young man, who came to this country from Ireland a few years ago; that when he came to this country, it may be said, he was penniless; that since he came to this country he has been employed as a salesman in retail dry-goods stores in the city of Baltimore at a low salary, so low as to have rendered it impossible for him to have saved from his earnings any considerable sum of money before the time of the making of the purchase hereinafter mentioned, pretended to have been made by him from said Wroth & Fullerton.

These respondents, further answering, say that they are informed and believe, and therefore aver, that the said Wroth & Fullerton suspended payment of their debts in the month of March, 1861, and that at the time
31 they so suspended payment they had on hand a stock of dry-goods worth from sixty to seventy thousand dollars, and book accounts worth from twenty-five to thirty thousand dollars, and were indebted to the amount of about eighty or eighty-five thousand dollars.

These defendants, further answering, say that they are informed and advised, and therefore believe, that by certain acts of assembly passed by the legislature of Maryland execution was stayed from the 10th day of May, 1861, until the first day of November, 1862, on judgments rendered on contracts entered into before the 10th day of May, 1861, but if payment was made of one fifth of the debt and of principal and interest on or before the 1st day of May, 1862, a further stay of execution was given.

The defendants, further answering, say that they are informed and believe, and therefore aver, that previous to the first day of November, 1862, the said Wroth & Fullerton had determined to pay no part of any of the judgments rendered against them and that a great number of judgments had been rendered against them from the 10th of May, 1861, until the 1st of November, 1862, amounting in all to between thirty and forty thousand dollars.

These defendants, further answering, say that they are informed and believe, and therefore aver, that the said Wroth & Fullerton suspended payment in the month of March, 1861; that from the date of their suspension of payment as aforesaid until the 27th of October, 1862, they sold the
32 greater portion of said goods and collected a great many of said debts, amounting to a very large sum, and paid only a very small portion

thereof to their creditors, but retained the greater portion thereof and secreted the same for their own use and benefit, with a portion of which, or with the proceeds of a portion of which, the goods so levied upon were paid for.

These defendants, further answering, say that they are informed and believe, and therefore aver, that at the time of making said purchase by said complainant from said Wroth & Fullerton he had knowledge that the said Wroth & Fullerton had suspended payment as aforesaid; that the judgments aforesaid, or a great many of them, had been rendered, and that the stay law would not protect the said Wroth & Fullerton after the first day of November, 1862, unless they paid one fifth thereof with interest and costs, and that they did not intend to do so.

These defendants, further answering, say that they are informed and believe, and therefore aver, that on or about the 27th day of October, 1862, the said complainant having full notice of the matters aforesaid, conspired with said Wroth & Fullerton to aid them to hinder, delay, and defraud the creditors of said Wroth & Fullerton of their just and lawful debts, claims, and actions, and that in part execution of said conspiracy the said complainant made the purchase aforesaid from the said Wroth & Fullerton.

33 These defendants, further answering, say that they are informed and believe, and therefore aver, that the said purchase from said Wroth & Fullerton, by the complainant, was not made by said complainant for his own benefit, but for the use and benefit of said William G. Wroth, in whole or for a great portion thereof, and from the time of the purchase aforesaid until the time of the filing of said bill of complaint the said complainant has been conducting the business of said store for the use and benefit of William G. Wroth, and at the time the marshal levied on the goods in store No. 85 W. Baltimore street, as aforesaid, the goods so levied upon were not the property of said William G. Wroth, and that the complainant made said purchase from said Wroth & Fullerton, and allows himself to be held out as the proprietor of said business and as the owner of the goods so levied upon, for the purpose of shielding and protecting the goods of said William G. Wroth from the creditors of said Wroth & Fullerton, and with the view, purpose, and intent of hindering, delaying, and defrauding the said creditors of their just actions, claims, and debts.

And these defendants, further answering, say they deny all and all manner of unlawful combination and confederacy in the said complainant's said bill of complaint charged, and pray that the injunction heretofore granted

34 in this cause may be dissolved, and that they may be hence dismissed with their reasonable costs in this cause sustained. And as in duty bound, they will ever pray.

G. KUTTER.
EDWARD LUCKEMEYER.

PATRICK MCLAUGHLIN, *Sol. for Defendants.*

STATE OF NEW YORK, *City of New York, sct:*

I hereby certify that on this 20th day of April, in the year eighteen hundred and sixty-four, before me, the subscriber, a commissioner of the United States for the 2d circuit and southern district of New York, personally appeared Gustavus Kutter and Edward Luckemeyer and made oath on the Holy Evangely of Almighty God that the matters stated in the foregoing answer are true as stated, according to the best of their information, knowledge, and belief.

In testimony whereof, I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[SEAL.] E. F. BETTS, *U. S. Com'r, &c.*

Afterwards, to wit, on the 23d day of April, in the year last aforesaid, the said complainant, by his solicitors aforesaid, filed in the circuit court here the following general replication, to wit:

35 Circuit court of the U. S. for the dist. of Maryland, April term, 1864.

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON AND OTHERS. } In equity.

Mr. Chew: Please enter general replication in this case to the answers of the respondents.

S. T. WALLIS, *Sol'r for Compl't.*

Afterwards, to wit, on the 26th day of April, in the year last aforesaid, the following agreement for commission was filed in court here, to wit:

Agreement.

Circuit court of the U. S.

SUTHERLAND
vs.
WATSON AND OTHERS. } In equity.

Mr. Chew: Issue commission by consent, in this case, to Frederick Pinkney, esq., to take testimony.

S. T. WALLIS, *for Compl't.*
PATRICK McLAUGHLIN,
23d April, 1864. *Sol. for Defendants.*

Whereupon commission was issued accordingly.

Afterwards, to wit, on the 16th day of May, in the year last aforesaid, time enlarged until Wednesday, 25th inst., and case set down for hearing on 1st of June next.

36 Afterwards, to wit, on the 21st day of May, in the year last aforesaid, the following agreement for commission, interrogatories, and cross-interrogatores were filed in court here, to wit:

Agreement.

Circuit court of the U. S. for the Md. district.

SUTHERLAND
vs.
WATSON AND OTHERS. } In equity.

It is agreed that commission may issue in this case to Edward Bissell, esq., of New York, to take the testimony of witnesses under the interrogatories filed. Said commissions to be returned in time for the hearing on May 16th, 1864.

WALLIS & THOMAS, *Sol'r for Compl't.*
P. McLAUGHLIN, *Sol'r for Compl'ts.*

Interrogatories.

In the circuit court of the United States for the district of Maryland.

GEORGE A. SUTHERLAND
vs.
WM. WATSON *et al.* }

Interrogatories to be propounded to witnesses to be examined on the part of the defendants:

1st. What is your age and residence?

2d. Do you know the parties to the above cause or any of them?
37 and if you do not know them all, state which of them you know.

3d. Do you know William G. Wroth and Robert B. Fullerton, partners, heretofore trading in the city of Baltimore under the name of Wroth & Fullerton, or either of them? and if you do not know both, state which of them you know.

4th. Were you, in the years of 1862 or 1863 a member of a mercantile firm? and if so, what was the name of the firm, and where did the said firm transact business?

5th. Have you any knowledge of the condition of commercial credit in the dry-goods business on the 27th day of October, 1862, and for twelve months previous to that period, and from then until the 11th day of December, 1863? If yea, state your knowledge thereof, and whether, within that period of time, credit was usually given on sales of merchandise; and if so, to what class of persons, and for what time, and whether it was different at that time from what it was in the years of 1858, 1859, and 1860; and if credit was not given on the 27th day of October, 1862, and for twelve months before that period, and from then until the 11th day of December, 1863, as formerly, state the reason, if you know of any.

6th. Have you, in your individual capacity or as partner with another or others, at any time since the first day of November, 1862, sold to George A. Sutherland any merchandise? If yea, state how often; the amount you sold at each time; whether for cash or on credit; if on credit, for what time, and when the payments were made; and if on credit, whether you
38 received or were to receive any security for the payment thereof, and if you received or were to receive any security therefor State from whom you received or were to receive it, and what it was and what it was to be.

7th. Have you, or the firm of which you are a member, been applied to sell George A. Sutherland any goods on credit? If yea, state by whom.

8th. Do you know any other matter or thing that may tend to the benefit and advantage of the complainant in this cause? If yea, declare the same as fully as if you had been thereunto particular interrogated.

PATRICK McLAUGHLIN, *Sol. for Defendants.*

To EDWARD BISSELL, Esq., *New York.*

Cross-interrogatories.

Circuit court U. S. for the Md. dist.

SUTHERLAND
vs.
WATSON AND OTHERS. } In equity.

Cross-interrogatories on the part of the complainant to witnesses to be examined under commissions to Philadelphia and New York:

1st. Are you, or is the firm of which you may be a member, a creditor of the late firm of Wroth & Fullerton? If yea, please state the amount of such claim, and whether any steps, and if any, what steps have been taken for the recovery of the money due thereupon, and through what coun-
39 sel. State further whether or not you have, or your firm has, entered into any arrangement or understanding with any other creditor or creditors of Wroth & Fullerton, as to the collection or recovery of your or their respective debts, or have or has employed or entered into an arrangement to employ counsel for the prosecution of the same. If yea, please state and explain the same fully.

2. Have you any understanding or arrangement with any person in regard to your claim against Wroth & Fullerton or the collection of it? If yea, please set forth the same fully in your answer.

3. If in answer to the 3d interrogatory in chief you say that you have sold goods to George A. Sutherland since November 1st, 1862, and were to receive security from him for any purchase or purchases, please state who entered into such engagement with you to give security, and in whose presence such engagement was made. If it was in writing, please produce it.

4. If you answer the 7th interrogatory in chief in the affirmative, state whether such application to you to sell goods on credit to George A Sutherland was written or verbal. If written, please produce it. If verbal, state in whose presence it was made.

5. Have you any and what interest, directly or indirectly, in this proceeding or its result, or in making the goods of George A. Sutherland
40 liable for the debts of Wroth & Fullerton? If yea, please set forth the same fully.

WALLIS & THOMAS, *for Compl't.*

On the back whereof was endorsed the following agreement, to wit:

We agree that commission shall issue to William H. Drayton, esq., (208 South 4th st., Philad.,) to take testimony in that city.

W & T., *for Compl't.*
P. McL., *for Defendant.*

Whereupon commissions were accordingly issued.

Afterwards, to wit, on the 1st day of June, in the year last aforesaid, Frederick Pinkney, esq., the commissioner named in the commission first aforesaid, made return of the same to the court here, together with his proceedings under and in pur'ance thereof, which are in the words and of the tenor following, to wit:

Commission, &c.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To Frederick Pinkney, esq., greeting:

Be it known that you are appointed commission to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, (sitting in equity,)
41 between George A. Sutherland, plaintiff, and William Watson, Walter Magee, William Loeschigh, Otto Weisendonck, Gustav. Kutter, and Edward Luckenmeyer, defendants. Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendants; and that you examine them on your corporal oath, to be by you administered, upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission closed, under your hand and seal, to the said circuit court with all convenient speed.

Witness the Honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-three.

[L. S.] JAS. W. CHEW, *Clk Cir. Ct.*
Issued April 26, 1864. W. & T.

42 *Commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either party. So help you God.

The above oath was administered by me, a justice of the peace of the State of Maryland, in and for the city of Baltimore, at the time of my so doing and still, on the Holy Evangely of Almighty God, on this twenty-eighth day of April, A. D. 1864, at the city of Baltimore, in the State of Maryland, to Frederick Pinkney, the commissioner in the above commission named.

SAM'L G. SPICER.

Return.

In the circuit court of the United States for the fourth circuit, in and for the Maryland district.

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON, WALTER MAGEE, WILLIAM LOESCHIGH, Otto Weisendonck, Gustave Kutter, and Edward Luckemeyer.

43 At the execution of the annexed commission, issued out of the circuit court of the United States for the fourth circuit, in and for the Maryland district, empowering me to examine evidences in the above-entitled cause, in said court depending, I, Frederick Pinkney, the commissioner in the said commission named, having first duly taken the oath to said commission annexed, met on the twenty-eighth day of April, in the year of our Lord eighteen hundred and sixty-four, and at the request of the solicitors of the respective parties, assigned the thirtieth day of April in the same year, at eleven in the forenoon, and the office of Messrs. Wallis & Thomas, in St. Paul's street, in the city of Baltimore and State of Maryland, as time and place for the examination of witnesses under the said commission, at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in presence of the solicitors of the respective parties, to take the following depositions, that is to say:

Emory G Lee, a witness of lawful age, produced on behalf of the complainant, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. State your occupation, and in whose employ-
44 ment you now are.

1 answer. I am a dry-goods salesman, in the employment of George A. Sutherland, the complainant.

Second interrogatory. Where is Mr. Sutherland's place of business?

2 answer. It is No. 85 West Baltimore street.

Third interrogatory. Is he a wholesale or retail dry-goods merchant?

3 answer. He is a retail dry-goods merchant.

Fourth interrogatory. How long have you been living with him, and in what capacity?

4 answer. About fifteen months, and in the capacity of salesman.

Fifth interrogatory. Has he or not been occupying the same place of business since you have been with him?

5 answer. Yes, sir; at No. 85 West Baltimore street.

Sixth interrogatory. Have you or not any knowledge of a levy having been made upon the goods in Mr. Sutherland's store, by the marshal of the United States of this district, about the eleventh of December last? If yea, please state how long the marshal remained in possession, by
45 himself or his deputies, and what was done while he so remained.

6 answer. I have a knowledge of such levy. I think that the marshal remained there four or five days, and that he took possession on a Friday, remained there till the following Wednesday. At first, four men came down, one of whom was Mr. Young, the deputy marshal, and I heard him say to the other men that the best thing that could be done would be to shut up the store. The store, however, was not closed until the usual time, and Mr. Young was left there. Mr. Sutherland asked me to remain there, and I did remain there until about midnight, and one of the men who came with Young remained there as a watchman. Mr. Young went into a drinking-house, kept by Mrs. Russell, next door, and came to the store about midnight and said that Mr. Vance, the deputy marshal, said that I could not stay there; that he did not know what would happen if I remained; that the store might catch fire, or that I might set it on fire, or something of that kind, and that they would be responsible for it. Mr. Sutherland came about eleven at night, and gave me some money to get refreshments for them; which I did. When the officers first came there it created confusion, and the sales were suspended for a time. Parties came there to buy, and I told them that we could not sell to them as the goods were seized. The store was closed for a short time, by order of the officers, but after awhile it was reopened, the officers telling us that we could sell if we paid over the
46 proceeds of the sales to them, and during all the time that the officers were in possession the proceeds of sale were paid over to them. (It is admitted by the complainant's solicitor that the proceeds of sale, which were paid over to the marshal while his deputies were in possession, were refunded to the complainant upon the issuing of the injunction.) One or the other of the officers remained there all the time.)

Seventh interrogatory. State, if you can, whether any of the stock which was in the store when you went into Mr. Sutherland's employment, remained unsold and on hand at the time when executions were issued. If any portion remained on hand, was it large or small? State what proportion it was, to the best of your judgment.

7 answer. When I went into the store the stock of goods was very small, and but very little of that old stock remained at the time of the execution. I do not suppose that more than the one twentieth part of that old stock remained at the time of the execution, and probably even less than that.

Eighth interrogatory. Can you form an idea of the amount of stock which Mr. Sutherland had on hand at the time of the execution? If you can, please state what it was worth, to the best of your recollection.

8 answer. I could not correctly form an estimate, though I know
47 that the stock was light. Retailers generally reduce their stock at that time to prepare for the spring trade. I have not sufficient data to form an estimate of its value.

Ninth interrogatory. What sort of a business was Mr. Sutherland doing at the time of the execution?

9 answer. He was doing a good business before the execution. The execution seemed to put everything back, and his business is not as good as before. Almost everybody is aware of the execution having been levied.

Tenth interrogatory. Where has Mr. Sutherland made his purchases since you have been with him?

10 answer. Previous to the execution he bought in New York and Philadelphia; since that time he has been buying by sample from the drummers

Eleventh interrogatory. How has he kept up his stock since the execution?

11 answer. His stock has been kept light, just enough to make a show.

Twelfth interrogatory. Has Mr. Sutherland purchased in as large quantities since the execution as before it?

12 answer. No, sir.

Cross-examined for defendants.

48 First cross-interrogatory. Will you state in whose employment you had been before you went into Mr. Sutherland's?

1 x answer. I was in the employment of R. W. Carter, dry-goods and retail merchant, Washington City.

Second cross-interrogatory. In what months of the year do dry-goods merchants usually keep the largest stocks?

2 x answer. In the spring, it is in March, April, May, and June; in the fall, it is in September and October.

Third cross-interrogatory. Was the stock of Mr. Sutherland much greater in October, 1863, than it was at the time when the levy was made?

3 x answer. It was.

Fourth cross-interrogatory. How much greater was it, as near as you can judge?

4 x answer. The stock was reduced more than one half between October, 1863, and the time of the execution. Those who are familiar with buiness know that very little new stock is bought after the end of Octcber, while the stock on hand continues to be reduced by the sales.

49 Fifth cross-interrogatory. Do you know from whom, in Philadelphia and New York, Mr. Sutherland had been buying his goods before the time of the levy of the execution?

5 x answer. I know some of them, Jaffray and Stewart in New York, and Stewart and Pollack in Philadelphia, and many more whose names I do not remember.

Sixth cross-interrogatory. Did he make any purchases in Baltimore before the execution? And if so, from whom?

6 x answer. He bought domestic goods here from George W. Howard & Company, from Neal, and from others whose names I do not remember; but these dealings were not extensive.

Seventh cross-interrogatory. How do you know that he purchased from others whose names you do not remember?

7 x answer. From having received goods which did not come from the houses which I have specially named.

Eighth cross-interrogatory. Did he never buy goods from "drummers" before the levy of the execution?

11 x answer. He bought some, but not much. He generally went himself to New York and Philadelphia to make his purchases. You cannot form an estimate of the quality of goods from samples.

50 Ninth cross-interrogatory. From what drummers did he buy before the levy of the execution?

9 x answer. I know them by sight, but I do not know their names.

Tenth cross-interrogatory. How do you know that they were drummers?

10 x answer. From their having samples.

Eleventh cross-interrogatory. Is it not a very common thing for those who sell dry-goods on commission, and for those who import dry-goods, to send samples round to such houses as that kept by Mr. Sutherland for the purpose of effecting sales?

11 x answer. Not as a general thing; they generally leave their cards.

(Further cross-examined, &c., page 57, &c.)

The commission was then adjourned to the ninth day of May, in the same year, at one o'clock in the afternoon, and the office of P. McLaughlin, esquire, on Fayette street, in the city and State aforesaid, at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in the presence of the solicitors of the respective parties, to take the following depositions, that is to say:

Morell Craig, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth and saith as follows, that is to say:

51 First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known Mr. Sutherland twelve years and Walter Magee three or four years. I do not know any of the other parties.

Second interrogatory. Are you not the son of the late Robert Craig?

2 answer. I am, sir.

Third interrogatory. In what business was your said father, Robert Craig, engaged during the last fifteen years before his death?

3 answer. My said father died on the sixteenth of August, 1862, and for the last fifteen years of his life he was engaged in the dry-goods business in the city of Baltimore, except during the years 1860, 1861, and the year 1862, up to the time of his death, during which space of time he was out of business and his residence was in Baltimore County. His place of business was first at No. 22 Centre Market Space, and he removed then to No. 37 West Baltimore street.

Fourth interrogatory. Did he do a large or a small business, a wholesale or a retail business?

52 4 answer. It was rather a small retail business.

Fifth interrogatory. Do you know whether or not the complainant, Mr. Sutherland, was employed by your father, Robert Craig? If so, state when, in what capacity, and at what rate of salary.

5 answer. Mr. Sutherland was employed by my father in his store as clerk and salesman in the year 1852, and staid with him about three years. I do not recollect what salary Mr. Sutherland received, but when he left he wanted nine dollars a week as a higher salary; this my father was unwilling to give, and he then left.

Sixth interrogatory. Where did Mr. Sutherland then go?

6 answer. He went to Ross & McCreary's; at least that is the next place where I knew him to be.

Seventh interrogatory. Had Mr. Sutherland any means when he was with your father?

7 answer. None that I know of.

Eighth interrogatory. Is it likely that you would have known it if he had had any?

8 answer. I suppose I should have known it; I was very intimate with him.

53 Ninth interrogatory. Did you attend at your father's store during the time Mr. Sutherland was there?

9 answer. During about the last year that Mr. Sutherland was there I did.

Cross-examined by complainant.

First cross-interrogatory. Is not Mr. Sutherland, from all you know of him, a young man of intelligence, integrity, and industry?

1 x answer. Yes, sir.

It is agreed between the counsel of the respective parties that William Craig, if examined, would prove the same as Morell Craig.

Robert M. Dryden, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you the parties to this suit?

1 answer. I know them all.

54 Second interrogatory. Do you know William G. Wroth and Robert B. Fullerton, partners, trading under the firm of Wroth & Fullerton?

2 answer. I do, sir.

Third interrogatory. Did you or not in the year 1861 or 1862 rent a store on West Baltimore street to said Wroth & Fullerton?

3 answer. I did rent it to them in the years 1861 and 1862. The store was Nos. 89 and 91 on the south side of West Baltimore street I do not remember positively, but I think that the rent was 2,500 dollars a year; to the best of my recollections that was the rent during the whole term; they were during part of 1861, and I think that they settled with me in October, 1862. I am pretty positive that the rent was 2,500 dollars a year, and they were there nearly two years. They had a lease which they surrendered; and their last settlement with me was in five notes at a month a part, each for four hundred and odd dollars, that is to say, they gave me in settlement the notes of Mr. Sutherland, the complainant; those notes were all paid as they matured.

Cross-examined for complainant.

First cross-interrogatory. Look, if you please, at the five notes now produced and marked Complainant's Exhibits R. W. D., Nos. 1, 2, 3, 4, and 5, and state whether they are the notes to which you have referred on your examination in chief.

55 1 x answer. They are the same notes, sir.

Second cross interrogatory. Do you remember when Mr. Sutherland opened at No. 85 West Baltimore street, his present place of business?

2 x answer. I should say in November, 1862, or, perhaps, in October of that year.

Isaac Hartman, a witness of lawful, age produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known the complainant, Mr. Sutherland, five or six years, or perhaps more. I do not know the other parties.

Second interrogatory. Have you any particular relation to him?

2 answer. I have not, further than he is one of my customers and has purchased goods from me.

Third interrogatory. What is your business?

56 3 answer. I am a merchant tailor, at No. 4 South Gay street.

Fourth interrogatory. Has Mr. Sutherland purchased many goods from you?

4 answer. No, not a great many.

Fifth interrogatory. What would be the amount of his purchases from you?

5 answer. I do not suppose that he has bought fifty dollars from me; his brother has bought of me about the same amount, perhaps somewhat more.

Sixth interrogatory. How long have you known Fullerton & Wroth?

5 answer. I suppose I have known Mr. Wroth twenty years; Mr. Fullerton I have known slightly for may be ten years, from dealing at their establishment.

Seventh interrogatory. Have or not been on social and intimate terms with Mr. Wroth for several years?

7 answer. Yes, sir, for many years.

Eighth interrogatory. Have you or not been in the habit of occasionally lending money to Mr. Wroth whenever he wanted it and you had it to spare?

8 answer. Yes, sir, as I have done with many others. The amount
57 has never been large.

Ninth interrogatory. Have or not your family and that of Mr. Wroth been on intimate terms?

9 answer. He and I have been in the habit of visiting at each other's houses; our respective families do not visit.

Tenth interrogatory. State whether or not you have become security on an injunction bond filed in the present case; if yea, state the amount of the penalty.

10 answer. Yes, sir, I did. I do not recollect the amount of the penalty; the papers will show.

Eleventh interrogatory. Who first approached you for the purpose of getting you to become security as enquired of?

11 answer. Mr. William G. Wroth.

Twelfth interrogatory. Who was with him when he came to you, and where were you?

12 answer. No one came with him. I believe that I was at my place of business.

Thirteenth interrogatory. Where is William G. Wroth now?

13 answer. I do not know. I have not seen him since last Friday.
58 Fourteenth interrogatory. Where has he been since October, 1862, and in whose employment?

14 answer. He has been in the city of Baltimore, and in the employment of Mr. Sutherland at his place of business, No. 85 West Baltimore street.

Fifteenth interrogatory. Is there any sign over that store?

15 answer. I do not think there is. I have never noticed any sign there, though I never looked particularly.

Cross-examined for complainant.

First cross-interrogatory. State, if you please, whether when Mr. Wroth approached you with the request that you would go on the injunction bond, in this case, he did not tell you that Mr. Sutherland would secure you if necessary.

1 x answer. He did; yes, sir.

Second cross-interrogatory. You state that you have known Mr. Wroth for many years and very well. Please state whether you regard him to be a man of character and integrity.

2 x answer. I have always believed him to be such.

Third cross-interrogatory. Is not Mr. Sutherland, so far as you have
59 known him and known of him, a young man of industry and intelligence in his business?

3 x answer. I have always taken him to be so, and have always heard him spoken of in the same way by all whom I have heard speak of him.

Again examined for defendants.

Sixteenth interrogatory. What opportunities have you had of judging of Mr. Sutherland's intelligence as a salesman?

16 answer. From my own observation of him at his place of business and his dealings, and I have always heard him spoken of in the highest terms as a young man of strick integrity and attention to business; I have heard him thus spoken of by many of my friends.

The commission was then adjourned to the eleventh day of May, in the same year, at two in the afternoon, and the last-mentioned place. At which last-mentioned time and place the commission met, pursuant to notice, for the examination of witnesses on behalf of the defendants, and I proceeded, in presence of the solicitors of the respective parties, to take the following depositions, that is to say:

(The complainant's solicitor filed with me the "Complainant's Exhibits Commission Nos. 6 and 7.")

60 James W. Alnull, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Are you acquainted with William G. Wroth, Robert B. Fullerton, and George W. Sutherland, or with any and which of them? And if yea, how long?

1 answer. I have known Mr. Wroth for, I suppose, six years, and Mr. Fullerton for about the same length of time. I do not know George A. Sutherland personally, I have seen his paper only.

Second interrogatory. You are the president of the Bank of Commerce in this city. Had or not Wroth & Fullerton an account in said bank in the year 1860 and 1861?

2 answer. Wroth & Fullerton had an account with our said bank before and at the beginning of the present war.

Third interrogatory. Have you or not any knowledge of Lieutenant S. G. Baylor?

3 answer. I do not know him personally, and never had any direct intercourse with him.

Fourth interrogatory. Has your said bank had, directly or indirectly, any claim against the said Lieutenant S. G. Baylor? If so, state from whom it was received, whether it was collected, and from whom.

61 4 answer. Mr. Wroth, I remember, came to our bank and said to me that he wanted some cartridge goods, some woollen stuff, for the government at Fortress Monroe; that there was a large profit on the proposal or office for the stuff, and that he would like to make the profit, but as the stuff was a cash article on demand he could not procure it except for cash; that if the bank would furnish him with the cash he would send the article, and when he received payment for it he would hand the amount over to the bank. The bank did advance money to Mr. Wroth more than once. I believe that he at first made proper returns, which induced the bank to lend him money again; there were two or three, there were certainly two such transactions. I think that the amounts were not large, five, six, or seven hundred dollars at any one time, to the best of my recollection. There were various suggestions by Mr. Wroth as to an assignment to secure the bank's interest generally, and, among the rest, of this claim against Lieutenant Baylor in his official capacity, as I understood, he being an officer at Fortress Monroe, as I believe. About this time I went to Messrs. Wallis & Thomas, who were the counsel of the bank, for the purpose of his carrying out his promises to protect the bank by carrying out such assignment as the counsel of the bank might suggest; with his good promises I

62 left Mr. Wroth and Mr. Thomas and I know nothing personally of Mr. Wroth's course since. I never saw any assignment, but was told by Mr. Wroth that the claim against Baylor would be held sacred for the benefit of the bank.

Fifth interrogatory. About what time were those advances of money made by the bank to Mr. Wroth?

5 answer. I cannot tell that; it is impossible to trace the times, except that the advances were certainly made within six months before the failure of Wroth & Fullerton.

Sixth interrogatory. Look at the entry in the day-book of Wroth & Fullerton, on page 339, dated October 31st, 1862—

Lieut. S. G. Baylor, credit:

Sundries to George A. Sutherland	$1,337 08
Bank of Commerce	653 46
	1,990 54

amount his bill transferred and assigned to G. A. S. and Bank of Commerce in lieu of their accounts—and say what you know in reference to the portion of that entry referring to the Bank of Commerce.

6 answer. It is impossible for me to go into any details in reference to any entry in a book which you may produce here, and to give an intelligible answer to any such question. I am satisfied that Mr. Wroth held a claim against the government at Fortress Monroe, which he promised to col-
63 lect and hand over the amount to the bank. I repeatedly called Mr. Wroth's attention to the claim and to his promises, not only in my own person but also by messages through other persons, and Mr. Wroth represented that in consequence of some irregularities in the charges Baylor or the government refused to settle the bill. Thereupon, learning that Messrs. Green & Yoe were about to send or go to Fortress Monroe to collect a bill on their own account, I asked them to look after the account I have spoken of and to use their influence to secure its payments, which they promised to do. Whereupon I notified Mr. Wroth of their kind disposition and requested him to avail himself of it, which requests he wholly disregarded. I thereupon asked Messrs. Green & Yoe to ascertain the condition of the account, and upon their return they notified me that the money had been duly paid to Mr. Wroth; I then called Mr. Wroth's attention to that fact and he stated to me that he had received the money and had used or appropriated it.

Seventh interrogatory. State whether, to your knowledge, the transfer or assignment mentioned in said entry on the Day Book as having been made to the Bank of Commerce, was or was not made as in said entry stated.

7 answer. Mr. Wroth promised everything, but I never saw any assignment. I cannot speak of any details; I have told you of Mr. Wroth's promises, but he made no assignment that I know of, but he collected and ap-
64 propriated the money himself.

The complainant, reserving all exceptions to the above examination in chief for irrelevancy and incompetency, proceeds to cross-examine the witness as follows:

Cross-examined for complainant.

First cross-interrogatory. Look at the two promissory notes herewith produced and exhibited to you, marked "Complainant's Exhibits, Commission, Nos. 6 and 7," and state whether they were at any time held by the Bank of Commerce; and if yea, from whom the said bank received them, and whether or not they have been duly paid.

1 x answer. I believe I received those two notes at the hands of Mr. Worth, if not directly, certainly from him through his agent, for he often did his business through his clerks. They were received by the bank as collateral security for the general indebtedness of Wroth & Fullerton to the bank, or in other words, to be applied ts their credit when paid. They were duly paid and credited accordingly.

John E. Kitson, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded on that behalf, makes oath, deposeth and saith as follows, that is to say:

65 First interrogatory. Do you know the parties to this cause?

1 answer. I know the complainant only; I have known him ten or eleven years.

Second interrogatory. Do you know William G. Wroth and Robert B. Fullerton? and if yea, how long have you known them?

2 answer. I have known Mr. Fullerton about ten years, and Mr. Wroth probably about five or six years.

Third interrogatory. What is your business, and how long have you been engaged in it?

3 answer. I have been engaged in the business of a dry-goods salesman for about sixteen years.

Fourth interrogatory. Have you been salesman to Wroth & Fullerton? and if yea, how long and when?

4 answer. I was a salesman for them, commencing in September, 1859, and with them until a few days before they closed up finally in the fall of the year 1862.

Fifth interrogatory. Where did Fullerton & Wroth do business?

5 answer. When I first went there it was at No. 85 West Baltimore street, and they removed to Nos. 89 and 91, which is the second door above,

66 more than a year before I quitted them.

Sixth interrogatory. Did they or not continue to occupy the store No. 85 West Baltimore street for a considerable time after they had occupied Nos. 89 and 91?

6 answer. Yes, sir; they continued to occupy No. 85 for about five or six months after they occupied Nos. 89 and 91.

Seventh interrogatory. What was the date as nearly as you can recollect of Wroth & Fullerton taking possession of Nos. 89 and 91?

7 answer. I should think it was in the spring of 1861; I think it was in February or March, or thereabouts.

Eighth interrogatory. Was No. 85 occupied from the time that it was vacated by Wroth & Fullerton until it was occupied by Mr. Sutherland?

8 answer. Yes, sir; I think it was occupied for some time by Mr. George C. Neal; the length of that time I cannot say.

Ninth interrogatory. Have you any knowledge of your own, independent of hearsay, as to under whom Mr. Neal occupied that store?

9 answer. No, sir.

Tenth interrogatory. Is there now and has there been since October, 1862, any sign over No. 85 West Baltimore street?

10 answer. No, sir, I think not; at least I have never observed

67 any.

Eleventh interrogatory. Had Mr. Sutherland any pecuniary means when you first knew him?

11 answer. I don't think he had anything further than the salary he was earning.

Twelfth interrogatory. Were you on terms of intimacy with him, such as would enable you to judge?

12 answer. No, sir; not at that time. I knew him very well to speak to him, but was seldom in his company.

Thirteenth interrogatory. Have you any knowledge of the time when Wroth & Fullerton suspended payment?

13 answer. I cannot recollect the date, though I think it was in the spring of 1861, but I cannot say in what month.

Fourteenth interrogatory. Have you a general knowledge of the value of dry-goods?

14 answer. Yes, sir.

Fifteenth interrogatory. Could you form an estimate of the value of the stock of goods in the store of Wroth & Fullerton, at the time you left them?

15 answer. I left them about ten days or two weeks before they
68 finally closed. We took stock a very short time before they finally closed, and their stock was then from ten to twelve thousand dollars, taking the goods at their invoice value. This taking of stock was two or three weeks previous to their finally closing.

Sixteenth interrogatory. What was the value of Wroth & Fullerton's stock at the time they suspended payment in the spring of 1861?

16 answer. When they thus suspended payment I should judge the amount that they had was from sixty to seventy thousand dollars at its invoice value.

Seventeenth interrogatory. Have you any recollection of Wroth & Fullerton having made large purchases about the time when they suspended payment in the spring of 1861? If yea, to what amount?

17 answer. I could not say except that they made pretty large purchases two or three weeks before they thus suspended payment; Mr. Fullerton had been on to New York, and we considered that he had bought tolerably heavy about that time.

The commission was then adjourned to the twelfth day of May, in the same year, at five in the afternoon, and the same last-mentioned place; at which last-mentioned time and place the commission met pursuant to notice, and I proceeded, in the presence of the solicitors of the respective parties,
69 to take the following depositions, that is to say:

The said John E. Kitson, being still examined on behalf of the defendants, on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

Eighteenth interrogatory. What does Mr. Wroth now do?

18 answer. I think he is now acting as cashier or bookkeeper to Mr. Sutherland.

Nineteenth interrogatory. Where is Mr. Fullerton now?

19 answer. I do not know positively, but when I last heard of him he was in New York.

Twentieth interrogatory. What was, as far as you know, the condition of commercial credit in general about November, 1862?

20 answer. There was very little credit about that time; it was very limited.

Twenty-first interrogatory. What position in the firm of Wroth & Fullerton did Mr. Wroth occupy?

21 answer. As a financier, sir, generally.

70 Twenty-second interrogatory. Do you know or can you form an opinion of the monthly or annual expense of conducting an establishment like that of Mr. Sutherland at present, including rent, clerk hire, &c.?

22 answer. I could not form an idea of it; I know that Mr. Sutherland has conducted it in a very economical manner, with a very small force, and I should judge that he has brought down the expenses as low as they could be possibly brought.

Twenty-third interrogatory. How many salesmen has Mr. Sutherland now in employment?

23 answer. Besides himself, his brother, John Sutherland, and Mr. Wroth, he has two or three others.

Twenty-fourth interrogatory. What salary do salesmen usually get?

24 answer. The salary varies much, according to the ability of the salesman; a junior hand, youths 18 or 19 years old, such as I think Mr. Sutherland has, would get about three hundred dollars a year; I think that would fairly cover it.

Twenty-fifth interrogatory. What would consider a fair salary at the present time for his brother, John Sutherland?

25 answer. From 600 to 800 dollars a year.

71 Twenty-sixth interrogatory. Is Mr. Wroth, in your estimation, a competent bookkeeper, or was he so considered?

26 answer. He is considered a very good financier; I no not suppose he is anything extra as a bookkeeper.

Twenty-seventh interrogatory. What would you consider Mr. Wroth's services to be worth?

27 answer. It is a hard question to answer; I should think that his services at the desk would be worth 800 dollars a year; I do not know the extent of his actual services to them.

Cross-examined for complainant.

First cross-interrogatory. You say that you have known Mr. Sutherland ten or eleven years. Is he not and has he not been during that time an industrious, energetic young man, and a man of integrity and perseverance in business?

1 x answer. Yes, sir; I say he has.

Second cross-interrogatory. Is he not a man by his energy, industry, and economy, calculated to succeed in such a business as he is at present engaged in?

2 x answer. Yes, sir; he is remarkably so.

72 Third cross-interrogatory. You have stated that the invoice value of the stock of Wroth & Fullerton according to the stock taken some ten days or two weeks before they finally closed, was from ten to twelve thousand dollars. Will you be good enough to state what was the character of the stock, whether it was old or new, whether it was complete or made up of remnants, and what in your opinion was the fair market value by way of percentage upon the invoice prices?

3 x answer. We among ourselves at the time considered the character of the stock to be very hard, and I considered it to be remarkably hard and very undesirable just about that time. It was old stock, that is, the principal part of it was, and what you might expect it was, the fag end of a respectable stock of sixty or seventy thousand dollars which they had when they first failed; they had made but few new purchases. I remarked at the time that I thought it cheap enough at fifty cents on the dollar, but said that I would not like to pay more for it if I expected to make anything out of it. I know that it was offered to one party, Mr. Dugan, at the corner of Gay and High streets, and that he examined it, but what he offered for it I do not know, but I believe that his offer was not over fifty cents in the dollar, though I do not know it. I showed Mr. Dugan some of the goods, and the talk

73 in the store was that he did not offer as much as fifty cents on the dollar, though I have no personal knowledge of what his offer was.

Fourth cross-interrogatory. State, if you please, whether there was or not a rise in the value of goods after October, 1862.

4 x answer. Yes, sir; there was some time after that date; it kept going up for some time afterwards.

Fifth cross-interrogatory. Look at page 240 of the day-book of Wroth & Fullerton, now shown to you, and state in whose handwriting the entries are upon that page.

5 x answer. These entries are made by Mr. Stoner, formerly the book-keeper of Wroth & Fullerton.

Sixth cross-interrogatory. Do you know whether the stock of Wroth & Fullerton was advertised for sale?

6 x answer. Yes, sir; it was advertised once, one insertion in both the Sun and the American, and I took the advertisement myself to both those offices. Several parties examined the stock after the advertisement; I myself know that two parties did.

Seventh cross-interrogatory. Be good enough to state whether you have any personal knowledge of the sale to Mr. Sutherland, which is embraced on the said page 340 of the said day-book.

74 7 x answer. No, sir; I have no personal knowledge of it; at the time it was generally understood among us at the store that Mr. Sutherland had bought the stock.

Again examined for defendant.

Twenty-eighth interrogatory. What do you mean when you say that it was a hard stock?

28 answer. I mean that it was not at all desirable for sale.

Twenty-ninth interrogatory. Have you ever known the remnant of a retail stock to be an uncut stock?

29 answer. No, sir; I never knew one to be an uncut stock.

Thirtieth interrogatory. Did Wroth & Fullerton advertise their business in the usual way before they suspended payment?

30 answer. Yes, sir; previous to that time they used to advertise in the usual way; after that they did not, for they had not much for sale that was desirable.

Thirty-first interrogatory. Was the carrying the advertisement to the Sun and American at the time it was given to you, in the usual course of your business?

31 answer. No, sir; it was rather unusual to send me with a mes-
75 sage or advertisement.

Thirty-second interrogatory. What was your conclusion from your having been called on to carry that advertisement to the newspaper offices, at that time?

32 answer. Well, I cannot say positively; I think from the way in which Mr. Wroth asked me to go that he was trying to convince me that he was doing the best he could with the stock in the sale.

(The above interrogatory is objected to by complainant's solicitor.)

Thirty-third interrogatory. Were you ever called upon any previous occasion to carry an advertisement to the Sun or American offices?

33 answer. No, sir; never to carry any advertisements; I have been called on to go and buy goods, or something of that kind.

The commission was then adjourned to the sixteenth day of May, in the same year, at noon, and the last-mentioned place; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in presence of the solicitors of the respective parties, to take the following depositions, that is to say:

(The complainant's Exhibit F. P. No. 1, with filed with me.)

76 Alexander Murdoch, a witness of lawful age, produced on behalf of the defendant, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I do not know any of the parties.

Second interrogatory. What is your business, and how long and where have you been engaged in it?

2 answer. I have been in the dry-goods commission business in Baltimore, as principal for the last 42 years. (See correction of this answer on page 56.)

Third interrogatory. Had dry-goods advanced in price or otherwise about the 27th of October, 1862, from what they were in 1858, 1859, 1860, and 1861?

3 answer. They had materially.

Fourth interrogatory. At what rate per cent. do you suppose the advance to be?

4 answer. Fron 30 to 50 on cotton and woollen fabrics, and even upwards in some descriptions of such goods.

77 Fifth interrogatory. Does that rise in price to foreign or domestic goods, or to both?

5 answer. The price of one affects the other of a similar character. If foreign goods were to rise 30 per cent. it would carry up domestic goods of a similar character to a like extent, and vice versa.

Sixth interrogatory. What class of goods would not be embraced in the rise, if any, to the full extent of the rise?

6 answer. Fancy articles which might not suit the taste of the people; those articles depend on the taste altogether; I presume that staple goods rose more than fancy articles.

Seventh interrogatory. What would consider a stock of goods 11,000 dollars at invoice price, the remnants of a retail dry-goods store purchased before 1862, to be worth on or about the 27th of October, 1862?

7 answer. I could not answer that unless I saw the goods or the inventory; I could not pass an opinion on what I have not seen.

Eighth interrogatory. Supposing it to be the remnant of a stock of goods such as is usually kept in a retail dry-goods store on Baltimore street, in the city of Baltimore?

8 answer. If the goods had been purchased with an ordinary degree
78 of judgment at any time within four or five years previous to October, 1862, they ought to have been worth very nearly the cost, considering the advance that has taken place in goods.

Ninth interrogatory. Have you any knowledge of the condition of commercial credit from March, 1861, until the present time? What I mean by "commercial credit" is, whether goods in the dry-goods business have been sold on such terms as to credit since March, 1861, as they had been usually sold on for several years before. If yea, state your knowledge thereof.

9 answer. They have not; very few goods have been sold on credit at all; those who were entitled to credit would not take it, and those who wanted it could not get it.

Tenth interrogatory. Whom do you mean by "those entitled to credit"?

10 answer. Those who had continued to meet their engagements and were always prepared to do so.

Eleventh interrogatory. Would you suppose that a young man entering into a retail dry-goods business which would require sales of from 50,000 to 100,000 dollars a year to pay expenses, with a capital of from 1,000 to 2,000 dollars, about the twenty-seventh of October, 1862, would have a reasonable prospect of success?

11 answer. It would depend on his profits, sir; I should suppose from the advance of goods since then that he ought to have done well.

79 Twelfth interrogatory. I mean at the usual profits made at that business in the city of Baltimore.

12 answer. You must first tell me what the usual profits are; for in some conditions of the market they are large and at others small. In an advancing market they may be large, and in a declining market they must be small.

Thirteenth interrogatory. I am asking you in reference to the retail dry-goods business as it has been conducted in Baltimore since the 27th of October, 1862.

13 answer. I have not seen the balance sheet of any retailer in that line, and therefore cannot say what could be done since that date.

Fourteenth interrogatory. Do you mean to say that he would have done well on the amount of his capital, or that he would with the capital mentioned, considering the condition of credit, have been able to succeed in making such large sales as would allow him a profit, after paying expenses of such a dry-goods house as that which might reasonably be expected to be conducted at No. 85 West Baltimore street.

14 answer. That is a question which I can hardly answer; he might or he might not have friends who would enable him to purchase and sell goods to the amount of 100,000 or even 150,000 dollars a year.

80 Fifteenth interrogatory. I am enquiring in reference to a young man without any such friends as you speak of, and simply with the capital mentioned.

15 answer. In such a case I should think that his success was doubtful, taking into consideration the want of credit.

Sixteenth interrogatory. Would you, acting for your own interest or as trustee for others, feel yourself justified on the 27th of October, 1862, or thereabouts, in selling to a young man 5,500 dollars' worth of goods, on a credit running from one to eighteen months, without an endorser, and whom you knew to be worth not more than from 1,300 to 1,800 dollars? In answering this question, I desire you to consider the circumstances by which we were surrounded at that time. (See correction of this answer on page 56.)

16 answer. That would have depended altogether on my feelings as to the character of the person and his qualifications for business.

Cross-examined for complainant.

First cross-interrogatory. State, if you please, whether a considerable and continuing rise in the dry-goods market did not take place after October the 27th, 1862.

1 x answer. There was a rise, though not continuous, from October, 1862, to December, 1863; there was a considerable rise though with fluctua-

81 tions, but prices were always considerably higher than in October, 1862.

Second cross-interrogatory. In estimating the value of an old stock, chiefly of fancy dry-goods, is it not necessary, to anything like a fair valuation, that you should know the character and condition of the stock, the extent to which it had been cut, and how far the styles were new or out of fashion?

2 x answer. Undoubtedly, no proper estimate could be made without seeing the goods, their fitness for the market and the cost price.

Again examined for defendants.

Seventeenth interrogatory. I want to know whether you mean a proper or an accurate estimate in your last answer.

17 answer. I meant to say proper, for my judgment might be called in question and deemed inaccurate by another.

(Further examined on page 56.)

John H. Cole, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

82 First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known the complainant for about a year, and Mr. McGee slightly for about the same time. I do not know the others, though I have transacted some business with William H. Watson.

Second interrogatory. What is your business, and how long and where have you been engaged in it?

2 answer. I have been engaged as principal in the wholesale dry-goods business for the last 12 years in this city. I am a member of the firm of Howard, Cole & Company. Last year our firm was styled George W. Howard & Company.

Third interrogatory. Have you or not been selling goods to Mr. Sutherland since he entered into business? and if so, to what extent and on what terms?

3 answer. Mr. Sutherland has bought goods of us since he has been in business; to what extent I do not recollect. Our mode of doing business is cash; and we consider 30 days as cash. Mr. Sutherland never asked credit of us at all, not even the 30 days. He sometimes has taken the 30 days, but never asked it; but sometimes paid in two weeks. He paid us as
83 promptly as any customer whom we have on our books until the time of the execution in question in this suit, in December, 1863.

Fourth interrogatory. What amount of bill has he at any time taken 30 days upon?

4 answer. His bill would run along during the month to from 300 to 500 dollars or thereabouts.

Fifth interrogatory. What was the highest amount he ever paid you at any one time?

5th answer. I do not recollect, sir; I will furnish it from our books.

Sixth interrogatory. Has he often taken a credit of 30 days on your bills?

6 answer. I think not, sir; I will, however, examine our books. It is a matter not within my department in our house.

Seventh interrogatory. What has been the effect of the war on the sale of dry-goods in reference to credit?

7 answer. I think the larger portion of it has been done for cash, 30 days.

Eighth interrogatory. Has or has not since the commencement of the war the credit principle been abandoned in the sale of any dry-goods except to merchants of undoubted ability to pay?

84 8 answer. Yes, it has been abandoned except in those cases; of course, we would not sell goods to persons who had nothing to pay with.

Ninth interrogatory. Had the price of dry-goods advanced from what it was 1859, 1860, and 1861 before the 27th of October, 1862? and if so, how much per cent.?

9 answer. Yes, sir; it has advanced from 25 to 100 per cent., according to the character of the goods.

Tenth interrogatory. What class of goods advanced most and what less?

10 answer. Four-quarters brown cotton had advanced most, and woollen domestic goods; foreign dry-goods had advanced least. The price of gold and exchanges regulates considerably the price of foreign dry-goods, and did so at that time.

Cross-examined for complainant.

First cross-interrogatory. Is not your confidence in a man's integrity, industry, and capacity for business a very material element in your disposition to give him credit?

1 x answer. It is.

Second cross-interrogatory. What is your estimate of Mr. Sutherland in those particulars?

2 x answer. I look upon him as a man of integrity, fair business capacity, and industry.

85 Third cross-interrogatory. Were not his first purchases from you small?

3 x answer. I think they were.

Fourth cross-interrogatory. Does not the application of the cash principle to retailers impose upon them the necessity of applying the same principle to their customers?

4 x answer. It does.

Fifth cross-interrogatory. Was there not a considerable rise in dry-goods after October, 1862, and for the year following?

5 x answer. There was a very considerable rise; there were some fluctuations, too, in the market during the last year; but goods are bringing higher prices now than at any time since the 27th of October, 1862; the rise has been constant, with fluctuations.

Sixth cross-interrogatory. State, if you please, whether the levy of execution on Mr. Sutherland's stock has not injured, and is not calculated to injure, his credit and business.

6 x answer. Yes, I should think it has injured his credit as well as his business.

Again examined for defendant.

Eleventh interrogatory. Has your house refused Mr. Sutherland
86 credit since the levy of the execution on the eleventh of December, 1863?

11 answer. He has never applied to us for any credit since; he was indebted to us at that time, which debt he has since discharged, and we then offered him a credit of thirty days, and have since sold him goods at thirty days.

Benjamin R. Yoe, a witness of unlawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known the complainant about twelve years. I do not know the defendants personally.

Second interrogatory. Were you at any time employed by Wroth & McCreary, the predecessors of Wroth & Fullerton? and if yea, in what capacity?

2 answer. I was employed by them, sir, as bookkeeper.

Third interrogatory. Was Mr. Sutherland, the complainant, in their
87 employment at any time?

3 answer. Yes, sir.

Fourth interrogatory. How long is it since you left them? Was Mr. Sutherland with them then? and if so, at what rate of salary?

4 answer. I left them on the fourth of March, 1857. Mr. Sutherland was there at that time. I cannot say what his salary was positively, but I think it was 400 or 500 dollars a year.

Cross-examined for complainant.

First cross-interrogatory. Be good enough to state from your knowledge of Mr. Sutherland what his character is as to integrity, industry, and capacity for business, and whether or not you think him calculated to succeed in business.

1 x answer. His character is very good, sir, and I should think that he would succeed in any reasonable business undertaking.

The commission was then adjourned to the seventeenth day of May, in the same year, at noon, and the same place; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in
88 presence of the solicitors of the respective parties, to take the following depositions, that is to say:

(Complainant's Exhibit Commission F. P., No. 9, was filed with me.)

Thomas M. Green, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known Mr. Sutherland six or seven years; the other parties I do not know.

Second interrogatory. Where was Mr. Sutherland employed when you first knew him; in what capacity, and at what salary?

2 answer. I believed that he was then employed at Wroth & McCreary's, who were the predecessors of Wroth & Fullerton, as salesman, but at what salary I do not know.

Third interrogatory. What do you suppose it would cost a young
89 man to support himself in a respectable manner in the years 1858, 1859, and 1860?

3 answer. Not less than four or five hundred dollars I should suppose.

Fourth interrogatory. Do you know what rent Wroth & Fullerton paid for their store at No. 85 West Baltimore street?

4 answer. I do not.

Cross-examined for complainant.

First cross-interrogatory. State, if you please, whether a young man of small means and economical habits could not have lived for less than the amount you have stated if he had proper to make the necessary sacrifices.

1 x answer. I have no doubt of it.

Again examined for defendants.

Fifth interrogatory. What sacrifices do you think that he must necessarily make to do so?

5 answer. I should think that he must sacrifice going out at night, and other sacrifices that I could not specify.

Sixth interrogatory. I desire to ascertain from you what, in your opinion, it would cost him to board and clothe himself respectably and meet such other expenses as the most frugal young man would generally have to meet.

90 6 answer. As I have said, four or five hundred dollars a year, sir.

William A. Deane, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I have known Mr. Sutherland by sight for some years, and I know Mr. Watson and Mr. McGee. I do not know the other parties.

Second interrogatory. What is your business, and where and how long have you pursued it?

2 answer. I have been in the general dry-goods jobbing business for the last fifteen years in the city of Baltimore, and during part of that time I was in the retail dry-goods business also.

Third interrogatory. Did dry-goods enhance in price or not from what they were in 1858, 1859, and 1860, on or about the 27th of October, 1862?

3 answer. They were decidedly higher in October, 1862.

91 Fourth interrogatory. Would you be able to form any proximate opinion as to what per centum such advance amounted to?

4 answer. It is difficult to speak from memory, and I may be mistaken, but I think the advance was at least 50 per cent.

Fifth interrogatory. On what terms were dry-goods usually sold as to credit in 1861, 1862, and 1863, from what had been in 1858, 1859, and 1860?

5 answer. There was a great reduction in credit, but there were credits of from 10 days up to 6 months on foreign goods, but domestic goods were sold almost always on 30 days' credit.

Sixth interrogatory. On what terms as to credit was the greater quantity of goods sold usually by the jobbing houses in 1858, 1859, and 1860?

6 answer. I should think on six months' credit.

Seventh interrogatory. On what terms as to credit were goods sold by jobbers to retail houses in 1861?

7 answer. On very short credits of from 10 to 30 days, and in many cases the cash was exacted.

Eighth interrogatory. How was it in 1862?

92 8 answer. There was more confidence, but not much more, and the credits were short.

Ninth interrogatory. How was it in 1863?

9 answer. There was more confidence; but domestic goods have been sold on short credits only up to the present time, mostly of 30 days. The general terms of sale of dry-goods now is cash, which is considered among merchants to be the same as 30 days.

Tenth interrogatory. About the 27th of October, 1862, would you have sold a bill of goods, looking merely to the profits arising from the sale, on a credit running from one to eighteen months without an endorser, unless the party had been one of undoubted means?

(Objected to by complainant's solicitor.)

10 answer. You could not make a paper strong enough to induce me to give a credit on any such terms. I should have believed that goods would advance, and that I should lose by it in any event.

Eleventh interrogatory. Independent of your belief that goods would advance would you have made such a sale?

(Objected to by compl't's solicitor.)

11 answer. No, I would not.

Twelfth interrogatory. Would you or not have sold a remnant of a

93 stock of goods of 5,500 dollars at that time, looking to the condition of credit, to a young man who was not known to be worth more than

from 1,300 to 1,800 dollars, on a credit running from one to 18 months without an endorser?

(Objected to by complainant's solicitor.)

12 answer. No, I would not.

Thirteeeth interrogatory. In your opinion would any prudent man, looking alone to the advantage arrising from the transaction as it appears on its face, have made it?

(Objected to by complainant's solicitor.)

13 answer. As far as I am concerned I would not do it. I cannot answer for others.

Fourteenth interrogatory. Why would you not have done it?

(Objected to by compl't's solicitor.)

4 answer. Because I should not think it prudent to give any one so long a credit.

The complainant's solicitor before proceeding to cross-examine the witness requests the commissioner to enter upon his record that he reserves all objections notwithstanding.

Cross-examined for complainant.

94 First cross-interrogatory. You have spoken of the credits usually given at the times enquired of in the ordinary course of business. Suppose yourself to be utterly insolvent and able to make a sale of your remaining stock at a price satisfactory to you for paper which your creditors are willing to take for their debts and wait until its maturity, do you think that the question of the length of credit given on the notes would have anything to do with the prudence of the transaction?

1 x answer. If I were insolvent I should think that the prudence of the transaction was to be decided by the creditors and not by myself. If I were in any way personally bound by the transaction I should not consider it a prudent one or consent to it.

Second cross-interrogatory. Was there not a rise in dry-goods to a very considerable extent after October, 1862, and from that on during the year 1863?

2 x answer. Yes, there has been an occasional lull, but there has been a continual rise up to the present time; goods rose until the spring of 1863; then there was a fall, and they afterwards continued rising. I should think that there has been a rise of 50 per cent. from the spring of 1863 up to the present time.

95 John E. Hurst, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the parties to this suit? and if yea, how long have you known them?

1 answer. I do not know the complainant. I know Messrs. Watson & McGee and the firm of the other defendants.

Second interrogatory. What is your business, and how long and where have you been engaged in it?

2 answer. I have been in the jobbing dry-goods business in the city of Baltimore for the last eight years, on my own account.

Third interrogatory. What was the rate at which dry-goods were sold, as to prices, about the 27th of October, 1862, from what they had been in the years 1858, 1859, 1860, and 1861?

3 answer. To the best of my recollection they were 50 per cent. higher than they had been in those years.

Fourth interrogatory. What were the terms on which dry-goods were usually sold on credit in 1861, 1862, and 1863 from what they had been usually sold in 1858, 1859, and 1860?

4 answer. In 1861, 1862, and 1863 the major portion of goods were sold by us for cash, and that was, I think, the condition of the market; while in previous years the credit was generally six months.

96 Fifth interrogatory. About the 27th of October, 1862, would you have sold a bill of dry-goods on a credit running from one to 18 months without an endorser, merely from the profits arising from the sale, to any one whom you did not know to have ample means beyond his liabilities?

(Objected to by complainant's solicitor.)

5 answer. I should not have made a sale at any rate to any one on credit unless it were to one whom I knew to have sufficient means, and I should not have made such a sale unless it had been of perishable or undesirable goods, where I was willing to run the risk of loss. There might be circumstances which might induce me to make the sale.

Sixth interrogatory. Suppose that on the 27th of October, 1862, you had a remnant of a stock of dry-goods worth 5,500 dollars in your hands as trustee, would you consider yourself justified in selling them to a young man just about to open business, and who was not known to be worth more than from 1,300 to 1,800 dollars, on a credit running from one to 18 months without an endorser, looking to the prospect that he at that time would have of obtaining credit in the dry-goods business?

(Objected to by compl't's solicitor.)

6 answer. Not if I thought the goods were really worth 5,500 dollars. I, most assuredly, would not have made such a sale as that if I considered the goods to be worth 5,500 dollars.

97 Seventh interrogatory. Would you consider that any prudent merchant would have made such a sale under the circumstances, and at the time, having no other object in view than to make a bona fide transaction?

(Objected to by compl't's sol'r.)

7 answer. Unless I wanted to quit business or assist a friend I would not have made such a transaction.

Eighth interrogatory. Would you have entered into such a transaction even if about to quit business, unless you wanted to assist a friend? What I mean to enquire into is, whether you would have entered into such a transaction and given such a long credit to a person of such limited means, if the goods had been sold at a fair price, unless you had some other purpose in view than that of making a sale of the goods?

(Objected to by complainants' solicitor.)

8 answer. In the event of assisting a friend I must encounter the risk whether it was $1,000 or $10,000; I might do things to assist a friend which I could not do in a mercantile way, if I took the risk on myself and did not endanger others.

Cross-examined for complainant.

First cross-interrogatory. State, if you please, whether between the close of October, 1862, and the spring of 1863, there was or not a very considerable rise in dry-goods.

98 1 x answer. A very considerable one, sir; from October, 1862, to the first of March, 1863, there was a rise of 40 per cent. at least, a rise of 50 per cent. on some goods, and in a smaller proportion on others.

Second cross-interrogatory. If a merchant has on hand an old and undesirable stock of fancy dry-goods, the fag end of two stocks which have been nearly exhausted of desirable articles, and which constitute what would be called in trade "a hard stock," does he not, in making sale of such a stock, have to accommodate himself to terms, both as to price and time, which he would not listen to in the ordinary course of trade in making sale of fashionable and marketable goods?

2 x answer. Beyond all doubt he would, sir.

William A. Williar, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. What is your business, and how long have you been engaged in it?

1 answer. I have been in the wholesale dry-goods business, in the firm of Samuel Bevan & Company, in the city of Baltimore, for more than 20 years.

99 Second interrogatory. What was the difference in point of credit in sales of dry-goods actually made in 1858, 1859, and 1860 from those in 1862 and 1863?

2 answer. In 1858, 1859, and 1860 there was 6 months, and sometimes 8 months', credit; in 1861, 1862, and 1863 foreign goods were sometimes sold on credit, but domestics were invariably cash; very few foreign goods were sold on credit, and only to men of whom there was no doubt.

Fourth interrogatory. How was it generally as to the retail trade in 1861, 1862, and 1863?

4 answer. Generally speaking, it was for cash, except to a few well-established houses.

Fifth interrogatory. About the 27th of October, 1862, would you have sold to a young man about entering on business, and who was not known to be worth more than from 1,300 to 1,800 dollars, without an endorser, on a credit of from one to 18 months?

(Objected to by compl't's sol'r.)

5 answer. I would not.

Sixth interrogatory. If you had had at that time a remnant of stock of dry-goods worth 5,500 dollars, would you have felt yourself justified in selling them on those terms to a young man so circumstanced?

(Objected to.)

6 answer. No, I would not.

100 Seventh interrogatory. Do you think that any prudent merchant would have made such a sale, having no other object in view than making a bona fide transaction?

(Objected to by complainant's solicitor.)

7 answer. No, I think not.

Cross-examined for complainant.

First cross-interrogatory. If a merchant has on hand an old and undesirable stock of fancy dry-goods, the fag end of two old stocks reduced from 50,000 to 11,000 dollars, not renewed or materially added to for 18 months, and constituting what would be called in the trade "a hard stock," would he not be compelled to accept terms, both as to price and time, which he would be very unwilling, and would regard it as very unwise to except if he were making sale of new and fashionable goods in the ordinary course of his regular trade?

1 x answer. Yes, sir.

Again examined for defendants.

Eighth interrogatory. Although you might be inclined such a stock as that spoken of in the last cross-interrogatory at a much lower price and on a longer credit, would you, in October, 1862, receiving only a fair price for such goods, sell them to a young man about to enter into the dry-goods business, who was not known to have a greater capital than from 1,500 to 1,800 dollars on a credit running from one to 18 months, without an endorser, unless you had some purpose in view other than that of making the sale?

101

(Objected to by compl't's solicitor.)

8 answer. No, I would not at that time, because goods were advancing; in ordinary times it might be different.

Ninth interrogatory. Would you have made such sale at that time to such a party on such credit, irrespective of the fact that you believed that goods were about to advance?

9 answer. No, I would not have made such a sale unless I thought that the stock was very hard, so that I could not sell them otherwise. It would also depend on what I thought of the man; the character of the man would have a good deal of influance with me.

The commission was then adjourned to the nineteenth day of May, in the same year, at noon, and the same place last aforesaid; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in the presence of the solicitors of the respective parties, to take the following depositions, that is to say:

Alexander Murdoch, being again produced as a witness on behalf of the defendants, makes oath, deposeth, and saith as follows, that is to say:

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I am stated in my answer to the second interrogatory (page 33) as having been 42 years engaged in the dry-goods commission business. This is a mistake; I have 42 years altogether in the dry-goods business, but for only 20 of these years in the dry-goods commission business. In answering the sixteenth interrogatory, (page 36,) where I am asked as to the course I would pursue in acting as trustee for others, I desire to say that I would not have given the credit enquired of without security. Were I acting for myself, I should feel at liberty to follow my own feelings.

Seventeenth interrogatory. Acting for yourself, would you have made such a transaction as is stated in the said sixteenth interrogatory, having no other object in view than the profit which you would make of the transaction?

17 answer. My answer is that personal friendship might addict me to make such a sale, but as a general thing it would not have been usual to make such a sale in October, 1862.

Eighteenth interrogatory. In the absence of personal friendship, would you have made such a sale on the terms stated in that interrogatory?

18 answer. Upon reflection, I think not.

103

Nineteenth interrogatory. Supposing yourself to be in possession, on the 27th of October, 1862, in your own right or as trustee, of a remnant of the stock of a retail dry-goods store, what might be termed by a trader "a hard stock" worth 5,500 dollars, would you have sold it at that time to a young man who was about to enter into the dry-goods business, and who was not known to be worth more than from 1,500 to 1,800 dollars, on a credit running from one to 18 months, without an endorser or security, if you had no other purpose in view than that of making a fair sale?

(Objected to by complainant's solicitor.)

19 answer. I think not. It is my impression that I would not have done it; as a trustee I certainly would not have done it.

Cross-examined for complainant.

Third cross-interrogatory. Would you not your course in making sale of a very undesirable and unsaleable stock of old fancy dry-goods, be governed much more by what you were able to do in the particular case than by your ordinary custom as to the sale of new and fresh goods in your ordinary business?

3 x answer. It would undoubtedly as to price, but not as to security.

Fourth cross-interrogatory. Does not your personal knowledge of the man with whom you are dealing and your experience of his fidelity
104 and integrity, enter at all into your determination in selling to him with or without security?

4 x answer. Certainly it does, if it does not violate any usage of our business at the time.

Emory G. Lee, being again cross-examined on behalf of the defendants, makes oath, deposeth, and saith as follows, that is to say:

Twelfth cross-interrogatory. You state that you were employed by Mr. Sutherland about 15 months before the time you were examined. What would you estimate the stock in the store of Mr. Sutherland to be worth when you came there?

12 x answer. Went I first went into the store the stock there was very small, and a large portion of the shelves were filled up with old boxes. I went there first on the first of February, 1863.

Thirteenth cross-interrogatory. How many persons were then employed in that store?

13 x answer. Four men, including myself; that is, Mr. John Sutherland, Mr. Wroth, Mr. George Corell, and myself, and a boy about 16 years old, named James Clark.

Fourteenth cross-interrogatory. What salary did you get when you went there?

14 x answer. 400 dollars a year; I now get 450 dollars a year.

105 Fifteenth cross-interrogatory. Do you know what salary the other employees got, or now get?

15 x answer. I do not; but Mr. Sutherland told me I was getting the best salary.

Sixteenth cross-interrogatory. Did you understand by what he told you that you were getting a higher salary that Mr. Wroth or Mr. John Sutherland?

(Objected to.)

16 x answer. No, sir.

Again examined for complainant.

Thirteenth interrogatory. In what capacity was Mr. Wroth acting at Mr. Sutherland's store when you went there, and in what capacity does he continue to act?

13 answer. As bookkeeper.

Fourteenth interrogatory. Has he or not exercised, to your knowledge, any control over the business of the house other than that exercised by the other employees within their respective departments?

14 answer. He has not, sir.

Frank H. Inloes, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

106 First interrogatory. Do you know William G. Wroth and Robert B. Fullerton? and if yea, how long have you known them respectively?

1 answer. I have known Robert B. Fullerton since the year 1858. I do not know William G. Wroth.

Second interrogatory. What is your business, and what has it been for the last 10 or 15 years?

2 answer. At present I am clerk with Ross, Campbell & Co.; for 10 or 15 years prior I was a jobber of dry-goods.

Third interrogatory. Do you know the complainant?

3 answer. I do not.

Fourth interrogatory. Is it or not reasonable to suppose that a young man commencing on the 27th of October, 1862, having a capital of only from 1,300 to 1,800 dollars, considering the terms on which goods were then sold as to credit, purchasing a remnant of a retail dry-goods store, such as is known in the trade as "a hard stock," worth 5,500 dollars, on a credit running from one to 18 months, would have a reasonable prospect of success under such expenses as must necessarily be entailed on a person conducting such a store as No. 85 West Baltimore street?

(Objected to by compl't's sol'r.)

4 answer. He would not have a reasonable prospect of success.

107 Fifth interrogatory. Would such a person as that described in the next preceding interrogatory, and so circumstanced, be likely, by the first of November, 1863, to have a stock of goods worth about 25,000 dollars, considering the circumstances which then existed as to credit, unless he had the aid of friends to support him?

(Objected to.)

5 answer. I should think not.

Sixth interrogatory. Would you, about the 27th of October, 1862, having a remnant of a retail dry-goods stock, considered in the trade as "hard stock," worth 5,500 dollars, have sold the same to a young man about to enter into the dry-goods business, and not known to be worth more than from 1,300 to 1,800 dollars, on a credit running from one to 18 months, without an endorser?

(Objected to.)

6 answer. I would not.

Seventh interrogatory. In your opinion, would any prudent man, having no other object in view than that of making a fair transaction, have made such a sale?

(Objected to.)

7 answer. I should think not.

It is admitted in this case that Thomas L. Hall, one of the securities in the injunction bond in this case and in the case of Sutherland *vs.*

108 McCreary *et al.*, in the circuit court for Baltimore City, is the step-father-in-law of Mrs. William G. Wroth; that Mr. Wroth and Mr. Hall have been warm and confidential friends for the last several years; that said Hall became security on said bonds at the instance and request of said Wroth, and would not have become security on said bonds had not said Wroth so requested him and informed him of his own confidence in said Sutherland, and that said Sutherland would give him security if requested.

The commission was then adjourned to the twenty-first day of May, in the same year, at one in the afternoon, and the same place last aforesaid; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in presence of the solicitors of the respective parties, to take the following depositions, that is to say:

William Nagle, a witness of lawful age, produced on behalf of the defendant, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. State whether you know the complainant, George A. Sutherland, and William G. Wroth and Robert B. Fullerton.

1 answer. I do not know Mr. Fullerton at all; I know Mr. Sutherland and Mr. Wroth by sight only.

109 Second interrogatory, What has been your business for the last several years before June, 1863?

2 answer. That of a bookkeeper, sir. I am now a law student in Mr. McLaughlin's office.

Third interrogatory. Have you made an examination of some of the accounts in the books of Wroth & Fullerton?

(Objected to.)

3 answer. Yes, sir.

Fourth interrogatory. What appears to have been the amount collected, if any, by Wroth & Fullerton from the 21st day of March, 1861, until the 27th of October, 1862, on account of contracts entered into before the 21st of March, 1861?

(Objected to.)

4 answer. 11,821 dollars and 75 cents.

Fifth interrogatory. What appears to have been the amount of their indebtedness, if any, on the 21st of March, 1861?

(Objected to.)

5 answer. 80,010 dollars and 33 cents.

Sixth interrogatory. What appears to have been the indebtedness of Wroth & Fullerton, if any, on the 27th October, 1862, on account of contracts entered into before the 21st of March, 1861?

110 (Objected to.)

6 answer. 60,036 dollars and 10 cents.

Seventh interrogatory. What amount appears to have been paid, if any, since the 21st of March, 1861, upon their indebtedness at that time?

(Objected to.)

7 answer. 19,974 dollars and 23 cents.

Eighth interrogatory. What books have you examined for the purpose of ascertaining those facts?

(Objected to.)

8 answer. The ledger and cash-book; and I compared the ledger and cash-book on the amounts that has been paid"

The commissioner, at the request of the respondents' solicitor, here copies from a book produced to him by said respondents' solicitor, as the day-book of Wroth & Fullerton, and which book the commissioner had previously marked when produced on the examination of James W. Alnutt, the following entries on pages 337, 339, and 340 of said book; to the admissibility of which book in evidence and of the entries so copied, the complainant's solitor objects, and without waiving his said objections or any objections previously made to the testimony of the witness, propounds to him the cross-interrogatories hereinafter set forth.

111 Under date of October 27, 1862, page 337.

Wm. G. Wroth to Wm. G. Frisby:

Am't paid W. G. F.'s. note due Jan. 4, 1861, and by us paid, assigned to Mrs. Mary M. Frisby for W. G. T., $210 15.

Under date of October 31st, 1862, page 339.

Lieut. S. G. Baylor to sundries--	
By George A. Sutherland	$1,337 08
By Bank of Commerce	653 46
	1,990 54

Am't his bill transferred and assigned to G A. S. and B'k of Com. in lieu of their ac.

A. B. Lieut S. G. Baylor :		
July 11.—317.	14 p's 33-in. green moreen, 320, 42	$138 60
	18 p's 24-in. do., 432½, 45	194 63
	10 lbs. white yarn, 1 25	12 50
	Freight, 75; drayage, 38, (346 86)	1 13
Aug. 27.—341.	13 p's moreen, 2,186, 45	983 70
	2 bales flannel, 1,227¾, 35, (1,413 41)	429 81
Oct. 3.—	1 bale do., 548, 42	230 27
		1,990 54

Under date of October 31st, 1862.

George A. Sutherland to merchandise, 5,500 ..... $5,500 00

Amount of stock on hand and sold Oct. 27th, 1862, to him at 50 per cent. as per invoice.

112 *Bills receivable.*

To Geo. A. Sutherland, 5,500, for his seven notes as follows, viz :

1 dated Oct. 21st, 1 mo	$414 45
1 do., 2 mo	414 45
1 do., 3 mo	414 45
1 do., 4 mo	414 45
1 do., 5 mo	414 45
1 dated Oct. 27th, 12 mo	1,713 87
1 do., 18 mo	1,713 88
	5,500 00

The said William Nagle, cross-examined for defendants.

First cross-interrogarory. How old are you, and to what extent have you been employed in bookkeeping?

1 x answer. I am within three months of 21 years of age, and for about 3 years and a half was employed as assistant bookkeeper, and for six months afterwards as the exclusive bookkeeper of William McClymont & Co.

Second cross-interrogatory. Do you consider yourself a competent bookkeeper, and fully able to take charge of a set of books?

2 x answer. I understand the science of bookkeeping according to double entry.

Third cross-interrogatory. Can you state what appears by the books
113 of Wroth & Fullerton to have been the amount of outstanding debts on the 27th October, 1862?

3 x answer. I cannot, because I have not examined the books on that point; if I had an opportunity, I could do it.

Fourth cross-interrogatory. In ascertaining the amount of payments made by Wroth & Fullerton since the 21st of March, 1861, did your enquiries embrace an examination of their "borrow and loan account?"

4 x answer. Not the "borrow and loan account" strictly by itself.

Fifth cross-interrogatory. Do you not think that such an examination is somewhat essential to an exact ascertainment of their payments during that time?

5 answer. I do not think that it was necessary to ascertain the payments of their old debts contracted previous to March, 1861.

Sixth cross-interrogatory. How was it possible for you to know whether it was material or not without looking at the account itself?

6 x answer. Because the exhibit of the amount of their indebtedness of the 21st of March, 1861, which I made, embraces only their bills payable and the amounts which they owed on their other individual accounts independently of bills payable.

114 Seventh cross-interrogatory. Then you did not consult their borrow and loan account for the purpose of ascertaining either what they owed on the 21st of March, 1861, or what they paid between that date and the 27th of October, 1862?

7 x answer. No, sir.

Eighth interrogatory. Can you state what was the amount of their store expenses between the dates named, or of their profit and loss account?

8 x answer. I can do it, but I have not examined in reference to that.

Ninth cross-interrogatory. Then neither of those accounts have entered into the calculations of which you have given Mr. McLaughlin the result?

9 x answer. No, sir.

Emory G. Lee, being further cross-examined on the following cross-interrogatories to him propounded on behalf of the defendants, makes oath, deposeth, and saith as follows, that is to say:

Seventeenth cross-interrogatory. What was the amount of sales usually made monthly at the store No. 85 West Baltimore street, since you have been employed there?

17 x answer. I do not know; I only know the sales made by myself.

115 *Again examined for complainants.*

Fifteenth interrogatory. How long have you known Mr. Sutherland and Mr. Wroth?

15 answer. I have known Mr. Sutherland about 5 years, and knew him by sight before that; I have known Mr. Wroth about 4 years. I did not know him before I was employed in the store.

Sixteenth interrogatory. Were you ever in the employment of Mr. Wroth before you went to live with Mr. Sutherland?

16 answer. I was employed by Mr. Wroth shortly after the failure of Mr. George Hiss, and continued with him till shortly after the occurrences of the 19th of April, 1862.

Seventeenth interrogatory. State, if you please, whether you know anything of Mr. Sutherland's popularity as a salesman when you and he were employed together?

17 answer. He was one of the best salesmen in the store; and had more friends than any clerk in the store.

Eighteenth interrogatory. Has, or has not, a young man who is employed as a salesman, a popularity of his own with customers, which brings them to the store, independently of the popularity of the house itself?

18 x answer. He certainly has.

Nineteenth interrogatory. How was Mr. Wroth as to popularity
116 with customers, was he or was he not popular, and was he or not a desirable employee of Mr. Sutherland?

19 x answer. Mr. Wroth had a great many friends, and I should think that he was a desirable employee for Mr. Sutherland.

William Nagle, being again examined in behalf of the defendants, makes oath, deposeth, and saith as follows, that is to say:

Tenth interrogatory. State whether or not you were the bearer of a letter which Mr. McLaughlin gave you, and which was written by James McCreary to William G. Wroth. If so, state the time when you took it, whether you read it, and if you did, state its contents as nearly as you can recollect them, and what took place when you delivered it.

(Objected to.)

10 answer. I did carry that letter, and the date was about the 30th of December, 1863; I read its contents, which were that Mr. Wroth would please let Mr. Nagle have the sales book of Wroth & Fullerton and other books of the firm; that was about the substance of the contents. I did not at that time know Mr. Wroth even by sight. As I entered the store No. 85 West Baltimore street, the first person whom I saw was Mr. George A. Sutherland, whom I did know by sight; I enquired of Mr. Sutherland whether Mr. Wroth was in, and he answered that he was not, but that he Sutherland was his attorney; I then handed to Mr. Sutherland the said letter, which he
117 read, and told me that I could not have the books, that Mr. Wallis, his attorney, had them, and that he would see Mr. Wallis and let me know in a day or two whether I could get them or not. I then went away.

Eleventh interrogatory. Did you call there again in reference to getting said sales book, and if so, what took place?

(Objected to.)

11 answer. I called again on the 2d of January, 1864, and again saw Mr Sutherland. I enquired of him whether I could get the books; he asked me what books; I told him that it was the sales book and other books of Wroth & Fullerton, and referred him to the letter which I had given him at my first call. He told me that he had given the letter to Mr. Wroth, and that Mr. Wroth was not in, but that if would call again at two o'clock Mr. Wroth might be in. I did call again at that hour and Mr. Wroth was not in, and Mr. Sutherland told me that he had been mistaken in telling me that the books were at Mr. Wallis's, that it was his stock book that Mr. Wallis had. I went there again about the 4th of January, 1864, and enquired in said store for Mr. Wroth and was directed to the desk where Mr. Wroth was; I went up to him and saw him, and told him that I had left a letter for him with Mr. Sutherland, for some books of Wroth & Fullerton. Mr. Wroth took me out into the back room and pointed to a shelf on the right hand of the room as you go in, upon which were many old account books, and
118 said that those were all the books that he knew of, and that Mr. McLaughlin was entitled to have them all if he wanted them. I told him that the letter specified particularly a sales book, and he handed me a book which he said was a sales book. On looking at the last page of the book, I found that the last entries were of September, 1858, and I then asked him if there was not a sales book of a later date than that, to which he answered none that he had any knowledge of. I also observed that some pages had been torn out of the book, and Mr. Wroth seeing me looking at them, said that the boys had torn them out for the purpose of making out bills. I then brought the book away.

(Answer objected to.)

Twelfth interrogatory. Look at the book marked Defendants' Exhibit Commission, Sales Book, and state what are the dates of the last sales recorded therein.

(Objected to.)

12 answer. It is the said sales book which I received from Mr. Wroth as above mentioned, and the last entry in it is Wednesday, the 30th November, 1858.

Thirteenth interrogatory. State whether from its appearance any portion of the said sales book as originally bound has been abstracted; and if so, what portion?

(Objected to.)

12 answer. I should suppose that one third of the last part of said
119 book has been torn out.

Fourteenth interrogatory. How does it appear to have been abstracted? By tearing or by cutting?

(Objected to.)

14 answer. One page has been cut out, and the remnant of it bears traces of writing. The rest has been torn out.

Fifteenth interrogatory. Are there any indications in the book which would lead you to suppose that the portion of the book which has been abstracted was or was not written upon before it was abstracted?

(Objected to.)

15 answer. On the remnant left where a page has been cut out there are remains of writing; the part which has been torn out has been entirely removed.

Sixteenth interrogatory. Look at the ledger of Wroth & Fullerton, and state whether or not it contains any borrow or loan account.

16 answer. It does not.

(It is here admitted between counsel that there is a borrow and loan book of Wroth & Fullerton in the possession of the respondents' solicitor; but that the witness, William Nagle, never saw it and did not know of it.)

(All the answers to the interrogatories which have been objected to
120 are also objected to in this return.)

Again cross-examined for complainant.

Tenth cross-interrogatory. Are you quite sure that when you took Mr. McCreary's letter to Mr. Sutherland's store and handed it to Mr. Sutherland, you did not tell him to read it himself, that he would do as well as Mr. Wroth?

10 x answer. I am positive that I never said anything of the kind, and that never handed the letter to Mr. Sutherland until he said that he was Mr. Wroth's attorney.

Eleventh cross-interrogatory. You know that Mr. Sutherland is not an attorney; have you not confounded in your recollection what Mr. Sutherland said about his attorney, with his being Wroth's attorney? Is it not possible that you have made that mistake, the interview having taken place some months ago?

11 x answer. I don't know what Mr. Sutherland meant, but Mr. Sutherland certainly told me that he was Mr. Wroth's attorney, before anything was said on the other matters. I remember that distinctly.

Twelfth cross-interrogatory. Did not Mr. Sutherland tell you that he would give the letter to Mr. Wroth?

12 x answer. I believe he did not; he read it first and told me that I could not get the books; that is my recollection.

121 Thirteenth cross-interrogatory. He told you afterwards, however, that he had given the letter to Wroth?

13 x answer. Yes, sir; he did.

Again examined for defendants.

Seventeenth interrogatory. Which first occurred, your offering the letter to Sutherland, or his reaching to receive it from you when he saw it?

17 answer. I could not say positively; both the acts were almost simultaneous.

Eighteenth interrogatory. Have you any doubt that he opened and read the letter in your presence?

18 answer. I know that he did. It was an unsealed letter.

Mr. John H. Cole filed, by consent of counsel, his memorandum hereto annexed, (see pages 38 and 39.) Defendants' Exhibit Commission, Nos. 1 and 2 were also filed.

Admissions of counsel No. 2.

In the circuit court of the U. S. for the Maryland district.

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON *et al.*

It is admitted in this case that Wroth & Fullerton suspended payment on the 21st day of March, 1863.

And it is agreed that the law of the State of Maryland may be read
122 from the printed books of the Statutes of the State of Maryland.

S. T. WALLIS, *for Compl't.*
P. McLAUGHLIN, *for Def't.*

The commission was then adjourned to the twenty-fourth day of May, in the same year, at noon, and the same last-mentioned place; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in presence of the solicitors of the respective parties, to take the following depositions, that is to say:

John E. Kitson, being further examined on the following interrogatories to him propounded on behalf of the defendants, makes oath, deposeth, and saith as follows, that is to say:

Thirty-fourth interrogatory. Did you observe the relations between Mr. Sutherland and Mr. Wroth in the summer of 1861 and 1862? and if so, state whether they appeared to be intimate or otherwise.

(Objected to by complainant's solicitor.)

34 answer. They seemed to be very intimate, sir.

Thirty-fifth interrogatory. Were they in the habit of associating together during that time? and if so, state how far and in what respects you observed their association to be intimate and confidential.

(Objected to.)

35 answer. They used to ride out once in a while together in the
123 afternoon; it was no unusual thing for them to ride out together, and they had been in the habit of doing so for some time previously.

Thirty-sixth interrogatory. Was their intimacy at that time greater or less than it had been in former times, as far as you observed?

(Objected to.)

36 answer. I think it was rather greater, if anything at all; they seemed to be rather more intimate.

Thirty-seventh interrogatory. Had not their intimacy increased very much by the fall of 1862, from what it had been in 1860?

(Objected to.)

37 answer. No, sir; I don't think that it had increased greatly; they always had been particular friends and were a great deal together since I first

went into the store. Mr. Wroth seemed to think a great deal of Mr. Sutherland, and they were always considered as very intimate.

Thirty-eighth interrogatory. How was it as between Mr. Sutherland and Mr. Fullerton?

(Objected to.)

38 answer. They always seemed to be tolerably intimate, but not quite as much so as Mr. Wroth and Mr. Sutherland.

Cross-examined for complainant.

Eighth cross-interrogatory. How old a man do you take Mr. Wroth
124 to be?

8 x answer. I should take him to be about thirty-three years old.

Ninth cross-interrogatory. Was there anything in his intimacy with Mr. Sutherland other than perfectly reasonable and natural between an employer and a young man in his employment for whom he had respect and regard?

9 answer. No, sir.

Tenth cross-interrogatory. Is not Mr. Wroth a man of considerable popularity with customers and one who was likely to be of advantage to Mr. Sutherland, if retained in his employment, for the purpose of retaining his friends as customers?

10 x answer. Yes, sir; I think he was.

Eleventh cross-interrogatory. Of how many and of what stocks were the goods sold to Mr. Sutherland in October, 1862, the remnant?

11 x answer. It was what we call in the dry-goods business the fag end of two retail stocks, that is, of the old firm of Dryden & Gibbons and Wroth & Fullerton.

Twelfth cross-interrogatory. About what time, to the best of your recollection, did Wroth & Fullerton acquire the remnant of Dryden & Gibbons's stock?

12 x answer. It is so long ago that I would not like to say posi-
125 tively, but I think that it was early in 1861, either January or February.

Thirteenth cross-interrogatory. Had it not been pretty well picked over before they got it?

13 x answer. Yes, sir; it had been pretty well picked over, and was what among business men is considered a hard stock.

Again examined for defendants.

Thirty-ninth interrogatory. Do you know what Wroth & Fullerton paid for it?

39 answer. I understood at the time that they paid 52 and a half cents on the dollar, but I have no personal knowledge on the subject.

Fortieth interrogatory. Where is Mr. Fullerton now?

40 answer. I think he is in New York; at least he was there when I last heard of him. He has been absent from Baltimore for a year.

Again cross-examined for complainant.

Fourteenth cross-interrogatory. Do you know, or do you remember, whether or not Mr. James McCreary, one of the creditors of Wroth & Fullerton, and one of the defendants to the injunction proceeding of Mr. Sutherland in the circuit court for Baltimore City, was present at the taking of stock of Wroth & Fullerton just previous to the sale to Mr. Sutherland?

126 14 x answer. Yes, sir; he was. He superintended the taking of the stock, which was probably 2 or 3 weeks before the closing up.

Again examined for defendants.

Forty-second interrogatory. How long did it take to take stock?

42 answer. I think we took what was left of the stock in one week; it was not very hard to take it.

Forty-third interrogatory. Was Mr. McCreary there while the stock was counted and measured?

43 answer. No, sir; he was not.

Forty-fourth interrogatory. Was the inventory made on a book?

44 answer. Yes, sir; as usual, upon what is called the "stock book."

Again cross-examined for complainant.

Fifteenth cross-interrogatory. Was not the counting and measuring done by each clerk in his department prior to the making the entries?

15 x answer. Yes, sir; the same as usual. That is the usual way, and has been so ever since I was in the business, each clerk taking down what was in his own department and being responsible for it.

Again examined for defendants.

127 Forty-fifth interrogatory. What had Mr. McCreary to superintend?

45 answer. As far as I saw, Mr. McCreary merely superintended the entering of the stock on the stock book.

Forty-sixth interrogatory. I suppose, then, that neither Mr. Wroth nor Mr. Fullerton were there.

46 answer. Yes, sir; they were; I know that Mr. Wroth was there and called the stock off in the presence of Mr. McCreary, and I think that Mr. Fullerton was there pretty much all the time.

Forty-seventh interrogatory. Do you mean to say that Mr. McCreary superintended Mr. Wroth in that transaction?

47 answer. Yes, sir; he did. Mr. Wroth called out the number of yards and prices according to the ticket, and if a piece of goods had no mark or ticket Mr. Wroth generally left the price to my judgment. Mr. McCreary superintended the entries on the book, which were made by Mr. Stover, the bookkeeper, as the goods were called out.

Forty-eighth interrogatory. Is there or not a sign over No. 85 West Baltimore street?

48 answer. There is not, and there has been no sign there since Mr. Sutherland occupied it.

128 James Owens, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. State whether you know Mr. Sutherland and Messrs. Wroth & Fullerton.

1 answer. Yes, sir; I know them all. I have known Mr. Sutherland almost ever since he first came to America.

Second interrogatory. What is your business, and how long have you been engaged in it, and with whom?

2 answer. I am a bookkeeper, and have been with Robert Moore & Co. over twelve years.

Third interrogatory. Suppose that the proprietor of a store were to abstract a portion of a sales book; what would such an act indicate to your mind as a bookkeeper?

(Objected to.)

Answer. A purpose of concealment.

Fourth interrogatory. Do you know whether there is a sign over the store No. 85 West Baltimore street?

129 4 answer. I do not know. There used to be a sign when Wroth & Fullerton were there. I never, however, take particular notice of signs.

Fifth interrogatory. Is there any store of that class, which is occupied as a store, which is without a sign, to your knowledge?

5 answer. Not to my knowledge.

Cross-examined for complainant.

First cross-interrogatory. Do you not know that Mr. Sutherland has been doing business for the last year or two at the store formerly occupied by Wroth & Fullerton, on Baltimore street?

1 x answer. Yes, sir.

Again examined for defendants.

Sixth interrogatory. Have you any knowledge of your own that Mr. Sutherland kept that store? If so, state it.

6 answer. Yes, sir; I have. My knowledge is that my wife purchased goods there of Mr. Sutherland and I paid for them and received the receipt from Mr. Sutherland in his own name.

William Nagle, being further examined on the following interrogatories to him propounded on behalf of the defendants, makes oath, deposeth,

130 and saith as follows, that is to say:

Ninth interrogatory. Have you, since your previous examination, examined the "borrow and loan book" of Wroth & Fullerton now produced to you?

(Objected to.)

9 answer I have, sir.

Tenth interrogatory. What amount appears to have been paid since the 21st of March, 1861, on account of moneys borrowed by them previous to that sale?

(Objected to.)

10 answer. The whole amount is 1,027 dollars and 3 cents, of which 300 dollars were paid to James McCreary and 727 dollars and 3 cents to E. A. Gibbs.

Eleventh interrogatory. Do you know of any store except No. 85 West Baltimore street, occupied as a store, which has not a sign over it to indicate the ownership?

11 answer. I do not know of any, and do not recollect to have seen any.

Again cross-examined for complainant.

Tenth cross-interrogatory. You have examined no other borrow and loan account of Wroth & Fullerton than this?

10 x answer. No, sir.

John Young, a witness of lawful age, produced on behalf of the de-

131 fendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. State whether you know Mr. Sutherland and Messrs. Wroth & Fullerton, or either of them.

1 answer. I know Mr. Sutherland and Mr. Wroth, but I do not know Mr. Fullerton.

Second interrogatory. What is your business, and what was it in December, 1863?

2 answer. I was then and am now a deputy marshal of the United States.

Third interrogatory. Were you one of the officers who served the writs of execution in December, 1863, at No. 85 West Baltimore street?

3 answer. Yes, sir.

Fourth interrogatory. State what you did when you went there, and how long you remained, and what you did while you were there, as nearly as you can now recollect.

4 answer. On a Friday afternoon I went down there, and the sher-
132 iff's deputies went with me. As the sheriff's writ was ahead of the marshal's they laid their writ and commenced to take an inventory. They stopped, I know not why, and then we took possession. I think that the sheriff's deputies closed the shutters that afternoon, but I do not recollect whether the shutters remained closed during all that afternoon or not. When the time came for shutting up Mr. Sutherland locked the store up and gave me the key. The sheriff put a watchman there, and the watchman and myself remained there all night. The next morning the shutters remained shut until eight o'clock or after, and then I came up to see the marshal at the request of Mr. Wallis, Mr. Sutherland's counsel, and then they were allowed to sell all day. Some time during the day the sheriff's claim was settled in some way, I do not know how. The store was locked up on Saturday evening, and I remained in possession of the key until Monday morning. On Monday morning I was directed by Mr. Vance, the deputy marshal, to let them go on and sell and account to me for the proceeds, which I handed over to Mr. Vance in the evening. I kept possession of the store during Monday night, and on Tuesday we went on in the same way as on the Monday, and the proceeds of the sales were handed to me and I paid them over to Mr. Vance. On Wednesday it was the same until some time in the afternoon, when I was relieved from the custody of the store. I did not interfere with the making of the sales during the business hours of the day, though I remained in the back of the store or in the front to see
133 that no articles were removed in bulk. I had no badge of office or any token on my person of my official character.

Cross-examined for complainant.

First cross-interrogatory. When you say that the sheriff's claim was settled, do you mean to say anything more than that he withdrew the further execution of his process?

1 answer. No, sir; I mean nothing more than that.

The commission was then adjourned to the twenty-seventh day of May, in the same year, at noon, and the last-mentioned place; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in the presence of the solicitors of the respective parties, to take the following depositions, that is to say:

Alfred W. Gibbons, a witness of lawful age, produced on behalf of the defendants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Were you not a member of the firm of Dryden & Gibbons?

1 answer. I was, sir; our firm has just expired by limitation.

Second interrogatory. Did you or not sell the remnant of your stock
134 of goods to Wroth & Fullerton? If yea, when, at what price, and with what security, and with whom for security?

2 answer. We sold it to Wroth & Fullerton, either in 1860 or in 1861, for cash, at 52 cents and a half on the dollar of the invoice prices. The purchase-money was paid cash.

Cross-examined for complainant.

First cross-interrogatory. State, if you please, what was the character of that stock.

1 x answer. I consider that it was in as good condition as a stock could be after selling the greater portion of the articles.

Second cross-interrogatory. It was, then, the remnant of your stock, was it not?

2 x answer. Yes, sir.

Third cross-interrogatory. Do you know anything as to the condition of the stock of Wroth & Fullerton in the fall of 1862, at or about the time when it was sold to Mr. Sutherland? If you do, please to state of what stock or stocks it was composed and what was its general character.

3 answer. Some time between the years 1840 and 1845 I was clerk to Dorsey & Garrettson. They failed and sold out, and the stock was purchased by Dorsey & Wroth, for whom I was also clerk. Mr. Dorsey died, and the stock passed into the hands of Wroth & McCreary, for whom
135 I was also clerk for about one year. Mr. McCreary drew out of the firm, and then Wroth & Fullerton succeeded to the stock. After it had passed into the hands of Wroth & Fullerton I know nothing of the stock except from general observation. From that observation, it was the remnant of a succession of stocks and was not in good condition. Most of it was old, and I do not regard it as worth by from 10 to 15 per cent. as much as that sold by Dryden & Gibbons to Wroth & Fullerton.

Fourth cross-interrogatory. Do you know Mr. Sutherland? If so, how long have you known him?

4 x answer. I have known him 10 or 12 years, if not longer.

Fifth cross-interrogatory. What is your knowledge of him as a man of business capacity, industry, and integrity?

5 x answer. I consider him to be a man of great integrity and good business capacity.

Again examined for defendants.

Third interrogatory. What amount did you get for your stock from Wroth & Fullerton?

3 answer. A little over 9,000 dollars.

Fourth interrogatory. About what time did the stock pass into the hands of Wroth & McCreary?

136 4 answer. About ten years ago.

Fifth interrogatory. What was the character of the stock kept by Dorsey & Garretson? Was it well selected or otherwise?

5 answer. It was as fairly selected as that of stores in general, and was a pretty fair stock.

Sixth interrogatory. What was the character of the stock of Wroth & McCreary? Was it well selected or otherwise?

6 answer. It was of a fair character.

Seventh interrogatory. Were you at the store of Wroth & Fullerton shortly before they sold out to Mr. Sutherland?

7 answer. I was there almost every day. I had my books in the back part of the store, and it necessary that I should be there every day, and I was there every day.

Eighth interrogatory. Do you suppose that a large portion of the stock of Dorsey & Garretson was received by Mr. Sutherland in his purchase from Wroth & Fullerton?

8 answer. I suppose not, but I cannot tell you how much. It might be more or less; I could not tell.

Robert W. Stover, a witness of lawful age, produced on behalf of the complainant, being by me first duly sworn on the Holy Evangely of
137 Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

(The solicitor of the complainant desires the commissioner to note that in examining this or any future witness as to the books of Wroth & Fullerton, he does not waive his objections, heretofore taken, to their admissibility.)

First interrogatory. Were you or not the bookkeeper of Wroth & Fullerton at the time of the sale of their stock to George A. Sutherland, the complainant? If you were, please state how long you had been in their employment.

1 answer. I was then in their employment, and had been so for five years and a half previously, and for the last three years of that time as their bookkeeper.

Second interrogatory. On page 339 of the day-book of Wroth & Fullerton, heretofore produced before the commissioner, there is an entry in regard to the transfer of the account of Lieutenant Baylor, to the amount of 1,337 dollars and eight cents, to George A. Sutherland. State, if you please, in settlement of what accounts of said Sutherland the said transfer was made.

2 answer. It was made in settlement for borrowed money, interest on the same, and of his services rendered as clerk.

138 Third interrogatory. Was or not said Sutherland in the habit of loaning money to Wroth & Fullerton, or discounting their notes or procuring them to be discounted?

3 answer. He was in the habit of loaning money to them and having notes discounted for them.

Fourth interrogatory. Look, if you please, at the book now shown to you and produced by the defendants as the "borrow and loan book" of Wroth & Fullerton, and state whether or not George A. Sutherland, frequently named in the entries therein, is the complainant.

4 answer. He is.

Fifth interrogatory. Were you familiar or not with the stock of Wroth & Fullerton, sold by them to Mr. Sutherland in October, 1862? If you were, please state what was the character of that stock and whence it had been derived.

5 answer. I was familiar with it. It was looked upon by all in the store, including myself, from my knowledge of it, as inferior portions of the stocks of Wroth & Fullerton and Dryden & Gibbons.

Sixth interrogatory. You have heard the statement made as to the character of the stock by Mr. Kitson, one of the witnesses for the defend-
139 ants. Please state whether your own opinion differs in any particular from his.

6 answer. It does not.

Seventh interrogatory. Was the stock or not examined with a view to purchase by any other person or persons prior to the sale to Mr. Sutherland?

If it was, please state by whom, and what was the highest price offered by any of those parties

7 answer. Mr. J. Osborne Dugan is the only whom I can name of my own knowledge, and his offer was 42 cents and a half on the dollar of invoice prices.

Eighth interrogatory. State whether or not Mr. Dugan is a merchant of skill and experience in the retail business, and where his business is carried on.

8 answer. He is looked upon by business men, but I cannot speak of my own knowledge. He carries on business at the corner of High and Gay streets.

Ninth interrogatory. Did or did not Mr. Dugan give the stock a careful examination?

9 answer. He did, sir; he was employed an hour or more in examining it to my knowledge.

Tenth interrogatory. The sale to Mr. Sutherland is entered on the day-book of Wroth & Fullerton, now shown to you, on page 340, as of the
140 date of the 27th October, 1862. A portion of the notes given by Mr. Sutherland bear date as of the 21st of October, 1862; others, that is to say the two larger ones, bear date as of October 27th, 1862. Please state, as well as you can remember, when the transaction was finally consummated.

10 answer. It was consummated on the 27th of October, 1862, but the sale was effected on or about the 21st of October, 1862.

Eleventh interrogatory. State, if you please, whether or not you have any recollection of the stock of goods in the store of Wroth & Fullerton having been distrained on by Mr. Dryden, the landlord, for rent, about or previously to the date of the five first named notes, which Mr. Dryden has heretofore proved before the commissioner to have been transferred to him by Wroth & Fullerton for his rent.

11 answer. The goods were distrained on by Mr. Dryden, and I think that it was about the 20th or 21st of October, 1862, and were only released on receipt of the notes.

(Complainant's exhibit R. M. Dryden, No. 1, was here filed.)

Twelfth interrogatory. You were for several years in the employment of Mr. Wroth. Be good enough to state whether or not, from what you observed of his standing and popularity with customers, he was a desirable person to be retained by Mr. Sutherland in his employment with a view to the business he might influence to the house.

141 12 answer. Mr. Wroth was always popular with his customers and a very desirable person to be so retained.

Fifteenth interrogatory. State, from such knowledge as you may have, and from your observation of Mr. Sutherland, as a salesman, whether or not he was popular in that capacity, and whether he had few or many friends who purchased from the house on his account.

13 answer. Mr. Sutherland had quite a large and desirable trade, with which he was very popular.

Fourteenth interrogatory. In whose employment are you now, and how long have you been there?

14 answer. With S. & R. Moore, South Charles street, for the last seventeen months. They are wholesale dealers in gentlemen's furnishing goods and tailors' trimmings.

Fifteenth interrogatory. State whether or not Mr. Sutherland has or had credit with that house since you have been with them, what his purchases have been, as well as you remember, and on what credits.

15 answer. He had and has such credit; his bills have amounted to near about 700 dollars nearly every month or five weeks at from 30 to 60 days. Recently his purchases have been larger than they were at first. (See 17th interrogatory, page 92.)

142 Sixteenth interrogatory. How has he met his engagements?

16 answer. Sometimes promptly; sometimes he has been a little overdue.

Cross-examined for defendants.

First cross-interrogatory. Do you know Lieutenant Baylor?

1 answer. I met him once at Fortress Monroe on business for Wroth & Fullerton.

Second cross-interrogatory. What was the largest amount that Wroth & Fullerton owed Mr. Sutherland at any one time?

2 x answer. That I cannot state without examining the books. By the books I observe that it was at no time greater than when they closed.

Third interrogatory. How much did it then amount to?

3 x answer. It then amounted to 1,337 dollars and eight cents.

Fourth cross-interrogatory. Do you know whether he had any of their paper at that time?

4 x answer. Not to my recollection.

Fifth cross-interrogatory. What knowledge have you of Mr. Sutherland having purchased any paper of Wroth & Fullerton at any time?

5 x answer. He never purchased any to my knowledge. Mr. Sutherland belonged to a banking institution from which he used to get discounts for the use and benefit of Wroth & Fullerton, he, Sutherland, endorsing the paper.

143

Sixth cross-interrogatory. In whose handwriting is the "borrow and loan book" kept?

6 x answer. The majority of the entries is in Mr. Wroth's handwriting; the remainder are in mine.

Seventh cross-interrogatory. What is the purpose of the borrow and loan book?

7 x answer. To keep an account of temporary loans and borrowings?

Eighth cross-interrogatory. Did they owe anything on the borrow and loan account on the 21st of March, 1861, that is not set down on said book?

8 x answer. They did; I only know of one amount, and that knowledge is derived from the previous borrow and loan book; that amount is 80 dollars.

Ninth cross-interrogatory. When did Mr. Sutherland owe the house of S. & R. G. Moore as much as 700 dollars?

9 x answer. At the present time.

Tenth cross-interrogatory. What was the highest amount he ever owed them at any one time before the 11th of December, 1863.

144 10 x answer. That I am unable to state; I think it was from 130 to 230 dollars; I can ascertain.

Eleventh cross-interrogatory. What was the longest credit given him by S. & R. G. Moore before the 11th of December, 1863?

11 x answer. Thirty days is the longest credit that we give, but he, like many others, took longer. There were no notes given on those purchases.

Twelfth cross-interrogatory. Do you remember having called on Mr. Wroth and Mr. Sutherland, at the request of Mr. McLaughlin, for the purpose of getting the sales book of Wroth & Fullerton?

(Objected to.)

12 x answer. I do; I called at Mr. Sutherland's store.

Thirteenth cross-interrogatory. On which of them did you call?

(Objected to.)

13 x answer. Mr. Wroth being at the desk, I asked him for it.

Fourteenth cross-interrogatory. Did you see Mr. Sutherland about?

(Objected to.)

14 x answer. I do not remember.

Fifteenth cross-interrogatory. Did you get the said book?

(Objected to.)

15 x answer. No, sir.

Sixteenth cross-interrogatory. Was there any reason assigned why you could not get the books? If so, state what it was.

(Objected to.)

145 16 x answer. There was; the reason assigned by Mr. Wroth was that Mr. Sutherland had used the book to record his sales; but that if Mr. McLaughlin or Mr. McCreary required it, he would cut out the leaves used by Mr. Sutherland and deliver the book to them.

Seventeenth cross-interrogatory. About what time did that take place?

(Objected to.)

17 x answer. I really do not recollect.

Eighteenth cross-interrogatory. About how long ago is it?

(Objected to.)

18 x answer. I think it was in the summer or fall of 1863.

Nineteenth cross-interrogatory. Did Wroth & Fullerton keep a sales book in the years 1861 and 1862?

(Objected to.)

19 x answer. They did.

Again examined for complainant.

Seventeenth interrogatory. I wish to understand your testimony in regard to the amounts of Mr. Sutherland's monthly dealings with your present employers, and not to leave it open to misunderstanding. Do you mean to say that those monthly dealings averaged 700 dollars for each and every month, or that they were of varying and smaller amounts, ranging up to 700 dollars?

17 answer. The highest monthly purchase fell short of 500 dollars,

146 and the smallest was perhaps 30 or 40 dollars. I suppose that the monthly average for the whole time was about 150 dollars. I did not mean to be understood that his average monthly purchases were 700 dollars, but that they had reached that amount, to the best of my knowledge at present. Our books will show. (15th interrogatory.)

Eighteenth interrogatory. Look at the complainant's Exhibit Stock Book A and state, if you please, what it is.

18 answer. It is a series of inventories of stocks of Wroth & Fullerton.

Nineteenth interrogatory. Look at the last inventory of stock recorded therein, and state when it was taken, in whose handwriting it is, and in whose handwriting are the signatures at the end of it.

19 answer. It was taken on the 13th of October, 1862, and is in my handwriting; the signature of Wroth & Fullerton thereto is in Mr. Wroth's handwriting, with my own signature as witness to the sale and receipt of the stock.

Twentieth interrogatory. State, if you please, whether Mr. Sutherland had anything at all to do with the books of Wroth & Fullerton.

20 answer. He had nothing at all to do with them.

147 Twenty-first interrogatory. Look at the several other inventories set down in said book, commencing at that of the 2d of September, 1861, which is the first in which the amount is added up, and state what the several amounts are.

21 answer. The inventory of the 2d of September, 1861, is in my handwriting; the amount is 32,362 dollars and 78 cents. The second of said inventories is also in my handwriting, and amounts to 21,229 dollars and 81 cents. These two inventories do not represent the actual amount of goods on hand. In the first is the amount of 653 dollars and 67 cents, and in the second is the amount 1,925 dollars and 43 cents, which were on the memorandum or approbation book, some of which goods were out on approbation, and others were sold to parties who had no regular accounts.

Twenty-second interrogatory. By whom was the stock taken of the inventory on which Mr. Sutherland bought?

22 answer. Mr. Wroth called it out, and I invoiced it and called it back to Mr. Fullerton, all of which was in the presence of Mr. McCreary.

Twenty-third interrogatory. Do you know whether the invoice prices, at a per centum of which Mr. Sutherland bought, were the exact cost prices, or were they marked higher or lower?

23 answer. They were marked above the actual cost; I judge at
148 least 10 per cent. above it; that was the habit of the house, and it is the habit of retail stores in general.

Twenty-fourth interrogatory. State, if you please, from your knowledge of the goods, whether or not the price paid by Mr. Sutherland was a fair and reasonable one.

24 answer. It was.

Again cross-examined for defendants.

Twentieth cross-interrogatory. According to the profits that are usually made in the retail dry-goods business, about what amount of sales would it require, in your opinion, to pay the expenses of such a store as No. 85 West Baltimore street, as now kept by Mr. Sutherland?

20 x answer. I should say sales of 30,000 dollars a year, at the present rate of profits.

Twenty-first cross-interrogatory. What amount of annual sales would it have taken at the time Wroth & Fullerton were in the store?

21 x answer. I should judge about 80,000 a year. At the time that Wroth & Fullerton had the store it was much larger than it is now; a partition has been since erected, which leaves only about two thirds of the former store, and the store now requires only about one third of the number of clerks who were needful there at the time of Wroth & Fullerton.

149 Twenty-second cross-interrogatory. What rent does Mr. Sutherland pay for the store?

22 x answer. I do not know.

Twenty-third cross-interrogatory. Has there been a sign on the store since the sign of Wroth & Fullerton was taken down?

23 x answer. I think not.

Again examined for complainant.

Twenty-fifth interrogatory. Was the stock purchased by Wroth & Fullerton invoiced for the purposes of the inventory under which Sutherland purchased at 52 and a half cents, at which it was bought, or at 100 cents on the dollar? I mean such part of said stock as was left.

25 answer. It was taken down at 100 cents on the dollar.

The commission was then adjourned to the thirtieth day of May, in the same year, at noon, and the office of Messrs. Wallis & Thomas, in the city of Baltimore and State of Maryland; at which last-mentioned time and place the commission met, pursuant to notice, and I proceeded, in the presence of the complainant's solicitor, to take the following depositions, that is to say:

James G. Fitzpatrick, a witness of lawful age, produced on behalf of the complainant, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him pro-
150 pounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know George A. Sutherland, the complainant in this case; and if yea, how long have you known him?

1 answer. I have known him seven or eight years.

Second interrogatory. What is your occupation?

2 answer. I am in the wholesale dry-goods business.

Third interrogatory. Have you, or not, since October, 1862, made sales of merchandize to Mr. Sutherland? and if so, please state to what amount, as well as you can remember.

3 answer. I have made sales to him since then to the amount of several thousand dollars, but I cannot tell the precise amount without consulting my books, which, however, I will do, and furnish the amounts to the commissioner. (See page 110 for this statement.)

Fourth interrogatory. Where has Mr. Sutherland being doing business during the period mentioned, and where did you send the goods which Mr. Sutherland purchased from you?

4 answer. On West Baltimore street, No. 85, at the store which had been previously occupied by Wroth & Fullerton, who, however, had left it for some time before Mr. Sutherland took it. I sent the goods to that
151 store which Mr. Sutherland purchased from me.

Fifth interrogatory. Do you know of any purchases made by Mr. Sutherland in New York during the period referred to? If you do, from whom were they made?

5 answer. They were made from the firms of Smith O'Brien & Co. and Wickes, Smith & Co. to my knowledge. I have heard of various other purchases made by him, but I have no personal knowledge of them.

Sixth interrogatory. Do you know anything of the character and condition of the stock sold by Wroth & Fullerton to Sutherland in 1862?

6 answer. I know it to be the fag end of two retail stocks, that of Wroth & Fullerton and that of Dryden & Gibbons. Without scrutinizing it very closely, I could see that it was not a very desirable stock, because there were in it many expensive and perishable goods, some of which had gone out of style.

Seventh interrogatory. Do you know, from your observation, whether or not Mr. Sutherland was getting on prosperously in his business before the seizing of his goods by the officers under the executions of the *complainants* in these proceedings.

152 7 answer. I have no positive knowledge on the subject, but from the general appearances I presume that he was; I was frequently in his store, and there was a general appearance of business, and he appeared to be getting on very well.

Eighth interrogatory. From your knowledge of Sutherland's affairs, and of the business he was doing, what would have been the effect upon his business and prospects if his goods had been taken out of his store and sold under the executions against Wroth & Fullerton?

8 answer. The effect would have been the breaking up of his business and credit.

Ninth interrogatory. As a merchant, familiar with the effect of the circumstances of this sort upon mercantile credit, please state what would have been the effect of breaking up his business and credit in that way upon his future prospects.

9 answer. As far as I am concerned I would have been unwilling to do business with him myself, and I think that the effect would have been the breaking up of all his prospects as a merchant.

Tenth interrogatory. Do you know what is Mr. Sutherland's character, from your own knowledge, as a man of industry, integrity, and energy?

153 10 answer. From my own observation his character is very good in all those particulars, and his general reputation is the same.

Eleventh interrogatory. What has been the effect upon his business and credit of the fact of his goods having been seized?

11 answer. The knowledge of the seizure and of the mortgage given to his sureties has terminated his credit with some houses, if not with all; it is calculated to effect him in the same way with all.

Twelfth interrogatory. How did it effect his credit with you and the New York houses?

12 answer. I have sold him goods since, but with the understanding that the sales made then should not enter into the risks of his business anterior to the seizure; in other words, that he was to make me safe in case of other difficulties. The houses in New York of which I have previously spoken have not sold to him since, and have pressed him to close their prior accounts.

Thirteenth interrogatory. Do you know Mr. Wroth, formerly of the firm of Wroth & Fullerton?

13 answer. I do, sir.

154 Fourteenth interrogatory. Please state whether or not he is a person popular with customers in the retail trade, and whether or not you would regard him as a person whom it would be advantageous to Mr. Sutherland to retain in his employment for the sake of his influence with customers, on becoming his successor in business.

14 answer. As to his popularity with customers in the retail trade, I have no personal knowledge, though I believe him to be popular, and as a business man and careful buyer I regard him as quite an acquisition to Mr. Sutherland.

William H. Pearce, a witness of lawful age, produced on behalf of the complainants, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know the complainant, George A. Sutherland? and if yea, how long have you known him?

1 answer. I have known him about two years and a half.

Second interrogatory. What is your own business?

2 answer. It is the dry-goods commission business.

Third interrogatory. Have you yourself sold, or have you been the

155 medium of sales to Mr. Sutherland since October, 1862? If yea, please state as well as you can remember to what amount.

3 answer. I have, sir, both sold to him directly and been the medium of sales to him. I herewith file a memorandum of such sales, which is marked "Complainant's Exhibit, W. H. Pearce, No. 1," showing that since the 31st of October, 1862, I have myself sold to him to the amount of 19,430 dollars and 89 cents, and have been the medium of selling to him to the amount of 4,819 dollars and 84 cents.

Fourth interrogatory. Where do the parties mentioned in your said memorandum, in the second part thereof, reside?

4 answer. In New York and Philadelphia. Dawson, Branson & Co., Morris L. Halliwell & Co., and Andrews, Wilkins & Co., of Philadelphia; and Edward S. Jaffray & Co., of New York, are the parties whose initials are given in my said memorandum.

Fifth interrogatory. Where were the goods sent which were purchased by Mr. Sutherland from and through you?

5 answer. To the store which he now occupies, No. 85 West Baltimore street.

Sixth interrogatory. State, if you can from personal knowledge or observation, how Mr. Sutherland has been getting on in his business since he has been dealing with you, and what his prospects in business, ac-
156 cording to reasonable calculations, were when his goods were seized in December last under the executions against Wroth & Fullerton.

6 answer. He appeared to be getting on very well, sir, from my personal observation, and his prospects were very good.

Seventh interrogatory. What was the effect of the seizure upon his business credit?

7 answer. For the time it stopped his credit entirely as far as I know. Afterwards the parties sold to him again.

Eighth interrogatory. What would have been the effect upon his prospects in life as a merchant, if the goods in his store had been sold under legal process as the goods of Wroth & Fullerton?

8 answer. In my opinion it would have broken him up entirely and permanently as a merchant; the stigma would have been very hard for him to get over, if, indeed, he ever could do so.

Ninth interrogatory. Did you or not become one of the sureties for Mr. Sutherland on his injunction bond in the circuit court for Baltimore City?

9 answer. I did.

Tenth interrogatory. Were you not indemnified therefor by Mr.
157 Sutherland? And if so, how?

10 answer. I was, by a mortgage on his stock.

Eleventh interrogatory. Do you know Mr. Wroth, formerly of the firm of Wroth & Fullerton?

11 answer. I do.

Twelfth interrogatory. State, if you know, whether or not he is popular with his customers as a retail merchant.

12 answer. To my knowledge he has a large circle of acquaintances, and I have always regarded him as very popular.

Thirteenth interrogatory. Was he or not a desirable person to be retained as an employee for the sake of his business acquaintance by a person succeeding him in business.

13 answer. I think he was, sir, very desirable, having been in a store in that location for a number of years.

Fourteenth interrogatory. If you know from your own personal knowledge, please state how Mr. Sutherland stands for integrity, industry, and those qualities which are apt to give a young man success.

14 answer. I believe him to be a young man of strict integrity, industry, and economical habits, and I have never heard anything to the con-
158 trary from any source.

Fifteenth interrogatory. At whose request did you become his surety?

15 answer. It was my own voluntary offer to Mr. Sutherland, induced by the impression that the execution had been levied upon his goods in the belief that he could not get security to protect himself, and that the parties could thereby get possession of the goods.

Joseph J. Dugan, a witness of lawful age, produced on behalf of the complainant, being by me first duly sworn on the Holy Evangely of Almighty God, being examined on the following interrogatories to him propounded in in that behalf, makes oath, deposeth, and saith as follows, that is to say:

First interrogatory. Do you know Mr. Sutherland, the complainant?

1 answer. I do not know him personally. I have frequently seen the gentleman now present, and who is now pointed out to me as Mr. Sutherland.

Second interrogatory. What is your own business and where do you carry it on?

2 answer. I have been in the wholesale and retail dry-goods business ever since the year 1842, and my place of business is at the corner of Gay
159 and High streets in this city.

Third interrogatory. State, if you please, whether or not in or about the month of October, 1862, you examined the stock of Wroth & Fullerton, then in their store on West Baltimore street, with a view to the purchase of the same.

3 answer. I did examine it, sir, cautiously and thoroughly, with a view to purchase it, and was engaged in that examination two days and a night, as well as I remember.

Fourth interrogatory. What offer, if any, did you make for the stock after such examination?

4 answer. To the best of my knowledge I offered forty cents in the dollar on the invoice prices, and was unwilling to give any more.

Fifth interrogatory. Do you or not regard that as a fair price for the said stock at the time?

5 answer. I made that offer, sir, and regarded it as a very liberal one, and made it only as a friend of Mr. Wroth, expecting to have hard work to get my money out of it; I saw no speculation in it at that price. The stock was very old, damaged, soiled, unsaleable, and unsuitable to the market. A good deal of it was only fit for the Charleston, Virginia, and other
160 southern markets, which were then closed; a good many of the most valuable goods were out of style, and the laces were soiled by exposure in the windows.

Sixth interrogatory. You say that you know Mr. Wroth. State, if you please, whether or not he is popular with customers, and whether or not he is popular with his customers, and whether or not he was an advantageous person for his successor in business to retain in his employment.

6 answer. I know that Mr. Wroth is honorable and can influence a great deal of trade, and I should think that he was a very desirable hand to employ. Personally I know nothing of his popularity, but I infer that he is popular from his large business connections and influence. I would have considered it very desirable to have him in my own store under the circumstances. I have known Mr. Wroth all my life.

The commission was then adjourned to the thirty-first day of May, in the same year, at three in the afternoon, and the last-mentioned place, when James G. Fitzpatrick, the witness above examined on behalf of the complainant, furnished the following statement to the commissioner, in supplement to his answer to the third interrogatory to him propounded, (see page 100,) as follows, that is to say:

Amount of sales to George A. Sutherland since November 2nd, 1862:
Six thousand one hundred and thirty-seven dollars and 36 cents.

161 No other witnesses being named or produced to me, I then closed the said commission, and now return it closed under my hand and seal, on the day and year last aforesaid, at the city of Baltimore, in the State of Maryland.

[SEAL.] FREDERICK PINKNEY, *Commissioner.*

The exhibits referred to in the foregoing returns are as follows, to wit:

Complainant's Exhibits R. W. D., Nos. 1.

$414 45-100. BALTIMORE, *October* 21*st*, 1862.

Five months after date I promise to pay to the order of Wroth & Fullerton four hundred and fourteen 45-100 dollars, value received.

No. —. Due.

Endorsed: WROTH & FULLERTON.
ROB'T W. DRYDEN & SON.

Complainant's Exhibit R. W. D., No. 2.

$414 45-100. BALTIMORE, *October* 21*st*, 1862.

Three months after date I promise to pay to the order of Wroth & Fullerton four hundred and fourteen 45-100 dollars, value received.

No. —. Due.

Endorsed: WROTH & FULLERTON.
ROB'T W. DRYDEN & SON.

162 *Complainant's Exhibit R. W. D., No.* 3.

$414 45-100. BALTIMORE, *October* 21*st*, 1862.

Four months after date I promise to pay to the order of Wroth & Fullerton four hundred and fourteen 45-100 dollars, value received.

No. — Due 21–24 Feb'y, 1863.

Endorsed: WROTH & FULLERTON.

Complainant's Exhibit R. W. D., No. 4.

$414 45-100. BALTIMORE, *October* 21*st*, 1862.

Two months after date I promise to pay to the order of Wroth & Fullerton four hundred and and fourteen 45-100 dollars, value received.

No. —. Due.

Endorsed: WROTH & FULLERTON.
ROB'T W. DRYDEN & SON.

Complainant's Exhibit R. W. D., No. 5.

$414 45-100. BALTIMORE, *October* 21*st*, 1862.

One month after date I promise to pay to the order of Wroth & Fullerton four hundred and fourteen 45-100 dollars, value received.

No. —. Due.

Store No. 85 Baltimore street.

Endorsed: WROTH & FULLERTON.
ROB'T W. DRYDEN.
ROB'T W. DRYDEN & SON.

Complainant's Exhibit, Commission, No. 6.

163 $1,713 87-100. BALTIMORE, *October* 27*th*, 1862.

Twelve months after date I promise to pay to the order of Wroth & Fullerton one thousand seven hundred and thirteen 87-100 dollars, value received, with interest from date.

No. —. Due.

Endorsed: WROTH & FULLERTON.

Complainant's Exhibit, Commission, No. 7.

$1,713 88-100. BALTIMORE, *October 27th*, 1862.

Eighteen months after date I promise to pay to the order of Wroth & Fullerton one thousand seven hundred and thirteen 88-100 dollars, value received, with interest from date.

No. —. Due.

Endorsed: WROTH & FULLERTON.

Complainant's Exhibit, Commission, No. 8—copy.

Whereas William H. Pearce, Thomas L. Hall, Isaac Hartman, and Thomas Sutherland have become the sureties of me, George A. Sutherland, of the city of Baltimore, upon two injunction bonds respectively, that is to say; the said Hall and the said Hartman upon an injunction bond given by me in a proceeding for an injunction instituted by me in the circuit court of the United States for the district of Maryland against Watson and others, and the said Pearce, Sutherland, and Hall upon a similar bond, in a
164 like proceeding against McCreary and others in the circuit court for Baltimore City; the former of said bonds in a penalty of $16,000, and the latter in a penalty of $10,000:

Now, therefore, for the purpose of indemnifying and saving harmless the said Pierce, Hall, Hartman, and Sutherland against and from any and all loss or damage to them or either of them, to accrue by reason of their said suretiship and responsibility, I, the said George A. Sutherland, in consideration of the premises, and of the sum of one dollar to me in hand paid, do hereby bargain and sell to the said William H. Pierce, Thomas L. Hall, Isaac Hartman, and Thomas Sutherland, their and each of their personal representatives and assigns, all my stock in trade, goods, fixtures, wares, and merchandizes of all sorts and descriptions, now being or hereafter to be in my store, No. 85 Baltimore street, in the city of Baltimore, or elsewhere, where I may hereafter do business, together with the proceeds thereof, and any and all goods, wares, and merchandizes which may hereafter be by me substituted for or purchased with the proceeds of the same. To have and to hold the same to the said bargainees, their said representatives and assigns, by way of mortgage, for their indemnification and protection to all intents and purposes in the premises.

And I do further hereby covenant and bind myself, and my representatives, at any time hereafter, upon demand of the said bargainees, or any of them, to make and execute any other or further mortgage or other
165 proper instrument in law, for the purpose of assuring to the said bargainees, by way of security and indemnity as aforesaid, all goods, wares, and merchandizes which I may subsequently purchase or acquire, from the proceeds of those now in my possession, or otherwise, from time to time.

The intent and meaning hereof being to give to my said bargainees, now and hereafter, all the rights and security at law and in equity which I may now lawfully, or may hereafter by further assurance, give for their indemnification as aforesaid.

Witness my hand and seal this 5th day of January, 1864.

GEORGE A. SUTHERLAND. [SEAL.]

Test: W. H. HAYMAN.

STATE OF MARYLAND, *City of Baltimore:*

Before the subscriber, a justice of the peace of the State, in and for the city aforesaid, personally appeared George A. Sutherland, the party grantor to the foregoing instrument, and acknowledged the same to be his act and deed, and at the same time personally appeared before me William H. Pierce

and made oath on the Holy Evangely of Almighty God that the consideration in the said instrument is true and bona fide as therein set forth, the said Pierce being one of the bargainees or mortgagees named in the said instrument.

WM. H. HAYWARD, *J. P.*

166 On the back whereof is the following endorsement, to wit:

It is admitted that the within is a true copy of the original of which it purports so to be, and that said original was duly recorded in the superior court clerk's office of Balt'o City on Jan'y 5, 1864.

P. McLAUGHLIN, *Sol'r for Defendants.*

Complainant's Exhibit, Commission, F. P. No. 9.

For sale.—The stock of a retail dry-goods house wishing to decline business. Address A. B., Sun Office, Balt'o, 9th Oct., 1862.

OFFICE OF THE SUN, *Balt'o, May* 17, 1864.

I hereby certify that the above is a correct copy of an advertisement which appeared in "The Sun" October 9th, 1862.

JNO. M. HOBLISTON.

On the back whereof is the following endorsement, to wit:

It is admitted that the within is a true copy of the advertisement spoken of by the witness Kitson in his testimony.

P. McLAUGHLIN, *for Defendants.*
S. T. WALLIS, *for Compl'ts.*

John H. Cole's memorandum.

167 Purchases and payment of Geo. A. Sutherland:

1863.		DR.	
Jan.	31.	To merchandise	$381 32
June	30.	Do	431 32
July	28.	Do	288 68
Aug.	31.	Do	974 90
Sept.	26.	Do., disc't and int	7 15
	30.	Do	479 61
Nov.	30.	Do	344 32
Dec.	8.	Do	21 78
			2,929 08

1863.		CR.	
Feb'y	14.	By cash	$381 32
July	25.	Do	200 00
Aug.	11.	Do	231 32
Aug.	27.	Do	288 68
Sept.	2.	Do	261 42
	25.	Do	352 83
	29.	Do	367 80
Oct.	14.	Do	164 45
Nov.	7.	Do	315 16
1864.			
Mar.	12.	By cash	344 32
April	13.	Do	21 78
			2,929 08

1864.
March 12. Bought merchandise..... $478 74

Paid April 13, '64.

The above statement is correct.
May 17, '64.

J. H. COLE.

Complainant's Exhibit R. M. Dryden, No. 1

168 George A. Sutherland mortgage to Robert W. Dryden.

This mortgage, made this twenty-third day of October, in the year of our Lord eighteen hundred and sixty-two, between George A. Sutherland, of Baltimore City, in the State of Maryland, of the first part, and Robert W. Dryden, of the same place, of the second part. Whereas William G. Wroth and Robert B. Fullerton, copartners trading under the name and firm of Wroth & Fullerton, are indebted to the said Robert W. Dryden in the sum of ($2,072 25-100) two thousand and seventy-two 25-100 dollars, for rent in arrear for the store or premises Nos. 89 and 91 Baltimore street, in the said city, occupied by said firm; and whereas the stock in trade and merchandize of said firm of Wroth & Fullerton has been by them sold and disposed of to the said George A. Sutherland, who has agreed, out of said purchase-money and on account thereof, to pay to the said Robert W. Dryden the aforesaid claim for rent of two thousand and seventy-two dollars 25-100 as required by said firm of Wroth & Fullerton, and to secure the payment thereof by the execution of this instrument; and whereas the said George A. Sutherland, in the execution of the aforegoing agreement and in payment of said sum of two thousand and seventy-two 25-100 dollars, has passed and deliv-

ered to the said Robert W. Dryden his five promissory notes, all dated
169 the twenty-first day of October, eighteen hundred and sixty-two, each for the sum of ($414 45-100) four hundred and fourteen 45-100 dollars, and payable, respectively, one, two, three, four, and five months respectively after the date thereof, to the order of the said Wroth & Fullerton, and by them endorsed by the said Robert W. Dryden, who doth hereby acknowledge the receipt thereof; and in order more effectually to secure the payment of said sum of two thousand and seventy-two 25-100 dollars, according to the tenor of the five above-recited promissory notes as each of the same shall mature and become payable, these presents are executed: Now this mortgage witnesseth that in consideration of the above-recited premises, and of the sum of one dollar to the said Sutherland paid by the said Dryden at the execution of these presents, the receipt whereof is hereby acknowledged, the said George A. Sutherland hath granted, bargained, and sold, and doth by these presents grant, bargain, and sell, assign, transfer, and make over, unto the said Robert M. Dryden, his personal representatives and assigns, all and singular, the stock in trade, goods, wares, merchandize, effects and chattels, and personal property of every kind and description whatsoever being and contained in the store of the said George A. Sutherland at Nos. 89 and 91 Balimore street, (south side,) nearly opposite Holliday street, and which

said property and premises it is contemplated to remove in a few days
170 to the store No 85 Baltimore street, two doors east of the above store, together with the avails and proceeds of the same and the stock in trade and effects in which said avails and proceeds may from time to time be invested, and also all and every renewal or renewals which may from time to time be made to the same, also the book debts and bills receivable

of the said George A. Sutherland now due or hereafter to be contracted and become due. To have and to hold the same unto the said Robert W. Dryden, his personal representatives and assigns forever: Provided always, and these presents are made upon this condition, that if the said George A. Sutherland, his personal representatives or assigns, shall well and truly pay, or cause to be paid, unto the said Robert W. Dryden, his personal representatives or assigns, the aforesaid sum of two thousand and seventy-two dollars and twenty-five cents, according to the tenor of the five above-recited promissory notes, as each of the same shall severally mature and become payable, and shall perform all the covenants and stipulations herein on his and their part to be performed, then this mortgage shall be void. And the said George A. Sutherland, for himself, his personal representatives and assigns, doth hereby covenant with the said Robert W. Dryden, his personal representatives and assigns, that he, the said George A Sutherland, his personal representatives or assigns, shall and will, at all times hereafter whilst the said mortgage debt or any part thereof remains unpaid, whenever so re-
171 quested, execute, acknowledge, and deliver, or cause and procure to be executed, acknowledged, and delivered, to the said Robert W. Dryden, his personal representatives and assigns, a new mortgage or mortgages of all the stock in trade, goods, wares and merchandize, effects and chattels, (whether being at No 85 or Nos. 89 and 91,) book debts and bills receivable, which the said George A. Sutherland may be possessed of or in any way entitled to at the time of the execution of such mortgage or mortgages; and that such mortgage or mortgages shall be executed, acknowledged, and delivered from time to time, as often as the party or parties thereto entitled shall require, so that until the payment of the entire amount of the mortgage debt aforesaid, the property hereby conveyed, together with that in which its proceeds may be invested and every renewal thereof, and every substitution therefor, and book debts and bills receivable of said Sutherland either now due or hereafter to become due shall be a security for the payment of the mortgage debt aforesaid, and shall and hereby is pledged therefor; and also, that in case any default be made in any conditions of this mortgage, then the entire mortgage debt aforesaid shall be deemed to have matured and to have become and be then payable, and the said Dryden, his representatives or assigns, shall thereupon be authorized and entitled to collect and realize the entire mortgage debt aforesaid, either according to the provisions herein contained or otherwise, as he or they may prefer, and
172 that without being stopped, delayed, or hindered by appeal, injunction, or otherwise at the instance of the said George A. Sutherland, his personal representatives; and further, in case any default is made in any condition of this mortgage, then these presents are hereby declared in trust, (without, however, any waiver on the part of the said Dryden, his representatives or assigns, to foreclose this mortgage by proper proceedings in equity, or to enforce the same by replevin or otherwise as and to the extent the most liberal construction of his rights may entitle him or them.) And the said Robert W. Dryden, his personal representatives and assigns, or his or their duly constituted attorney or legal agent, are hereby authorized and empowered to take possession of said entire mortgaged premises and the property and to sell the same or so much thereof as may be necessary, and to deliver the same to the purchaser or purchases thereof, which sale shall be made in the following manner, by giving at least ten days' notice of the time, place, manner, and terms of sale by daily advertisement published in some newspaper of Baltimore City, and the proceeds arising from such sale to apply, first, to the payment of all expenses and proper charges incident to such

sale; secondly, to the payment of all monies owing hereunder, whether the same shall have then matured or not; and as to the balance, to pay it over to the said George A. Sutherland, his personal representatives or assigns.

173 Witness my hand and seal.

G. A. SUTHERLAND. [SEAL.]

Test: WM. G. WROTH.
BENJ'N F. NAILS.
R. B. FULLERTON.

STATE OF MARYLAND, *Baltimore City, to wit:*

I hereby certify that on this twenty-third day of October, in the year of our Lord eighteen hundred and sixty-two, before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared the above named George A. Sutherland and acknowledged the foregoing mortgage to be his act and deed, and at the same time and place also, before me, personally appears the within named mortgagee, Robert W. Dryden, and made oath, in due form of law, that the consideration set forth in the foregoing mortgage is true and bona fide as therein set forth. Witness my name on the day and year aforesaid.

BENJ'N F. NALLS.

Received for record 27th October, 1862, at 1¾ o'clock p. m. Same day, recorded and exam'd, per—

GEO. E. SANGSTON, *Cl'k.*

For value received I hereby release the foregoing mortgage. Witness my hand and seal this 30th day of March, A. D. 1863.

ROB'T W. DRYDEN. [SEAL.]

Witness: GEO. E. SANGSTON, *Cl'k.*

I hereby certify that the aforegoing is truly copied from Liber G.
174 E. S. No. 29, folio 443, &c., one of the records of the superior court.
In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore City on this 14th day of May, 1864.

[SEAL.] ALFORD MACE, *Cl'k.*

Complainant's Exhibit W. H. Pearce No. 1.

Merchandise sold Mr. Geo. A. Sutherland by W. H. Peirce:

To merchandise from Oct. 31, '62, to Jan'y 1, '63.....	$1, 802 39
Jan'y 1, '63, to July 1, '63.....	8, 921 82
July 1, '63, to Jan'y 1, '64.....	2, 249 56
Jan'y 1, '64, to May 18, '64.....	6, 459 10
	19, 430 89
Mdse. sold G. A. S. by D. B. & Co. through W. H. P.....	586 24
M. L. H. & Co. through W. H. P.....	206 32
A. W. & Co. through W. H. P.....	522 19
E. S. I. & Co. through W. H. P.....	3, 503 09
	24, 248 91

Defendants' Exhibit, Commission, No. 1.

In the circuit court of the United States for the district of Maryland.

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON *et al.*

S. T. Wallace, Esq.. sol. for complainant:

SIR: You are hereby notified to produce at the examination of wit-
175 nesses before the commissioner in this case, on 21 May, 1864, at 12 o'clock, the letter written by Mr. James McCreary to Mr. Wm. G. Wroth, and delivered by Mr. Nagle to the complainant on or about the 30 Dec., 1863, for the sales book of Wroth & Fullerton.

PATRICK McLAUGHLIN, *Sol. for Defend.*

Defendants' Exhibit, Commission, No. 2.

This deed, made this twenty-seventh day of October, in the year eighteen hundred and sixty-two, between Wm. G. Wroth and Robert B Fullerton, of Baltimore City, in the State of Maryland, of the first part, and James McCreary, of the same place, of the second part, witnesseth, that for and in consideration of execution of the trust hereinafter mentioned and of the sum of ten cents the said William G. Wroth and Robert B. Fullerton, the parties of the first part hereto, do grant and assign unto the said James McCreary, his successors and assigns, all their interest, right, title, claim, and demand in and to any judgments, bonds, promissory notes, accounts, claims, and choses in action of whatsoever nature, and books of account, as partners, trading under the name of Wroth & Fullerton, deducting any claims such debtors may have against either the said Wroth & Fullerton. To have
176 and to hold the said books of account, judgments, bonds, promissory notes, accounts, and claims and choses in action unto the said James McCreary, his successors and assigns, in trust and confidence, however, and to and for the following purposes: to collect or compromise said judgments, bonds, promissory notes, accounts, claims, or choses in action, with all reasonable despatch, or if necessary and proper, dispose of the same to the best possible advantage, and with the proceeds thereof pay the expenses of the creation and execution of the trust hereby created, including reasonable counsel fees and reasonable commissions to himself as trustee. And after the payments of the expenses aforesaid and the retension of the commissions aforesaid shall have been made, the said McCreary as trustee as aforesaid shall pay from the balance of the trust fund in his hands the following, viz: to Paynter, Davis & Co., two hundred and eighty-nine dollars and twenty-four cents, with interest from the twenty-sixth day of August last, being the amount of cash bill of that date; to Hodges Bros., two hundred and seventy-eight dollars and five cents, being the amount of cash bill due them, payable with interest from this date; to Taylor & Gardner, two hundred and thirty-eight dollars and fourteen cents, with interest from date, for cash bill due them.

After the payments aforesaid shall have been made the said trustee
177 shall apply the balance on hand, if any, as follows, viz: he shall retain to himself sufficient to satisfy a debt of five thousand two hundred and forty-seven dollars, with interest from the date hereof, due and owing from the parties of the first part to him, and pay to John Fullerton, father of Robert B. Fullerton, the sum three thousand eight hundred and seventy dollars and fifty-three cents, with interest from the 20th March, 1862, for money advanced by him to the parties hereto of the first part, and to the

Bank of Commerce three thousand six hundred and seventy-one dollars and three cents, being the balance due it, should the balance on hand be sufficient to enable the said trustee to make the payments aforesaid, and retain to himself the said sum of $5,247; but should the balance on hand be insufficient to enable him to retain said sum and make the payments aforesaid required to be made from the balance last above-mentioned, then he will retain and pay the amount on hand in satisfaction of said debts pro rata.

And after the payments aforesaid shall have been made the said trustee shall apply the balance on hand, if any, in satisfaction of the following debts, viz: Loeschigh, Wesendonck & Co. one thousand one hundred and twenty-five dollars and eighty-four cents, with interest, being bill purchased of them on 15th March, 1861; Paynter, Davis & Co. three thousand dollars,
178 with interest from 10th April, 1861; Arnold, Constable & Co. four hundred and fifty-four dollars and seventy-five cents; P. Donald six hundred and seventy dollars and twenty cents; Hyde, Cae & McCullom two hundred and one dollars and seventy-five cents; Hodges Bros. two thousand two hundred and eighty dollars and fifty-one cents, until the same shall be fully satisfied and paid; provided the said balance last mentioned shall be sufficient for that purpose; but should the same be insufficient he shall then apply the said balance to the payment of said last-mentioned debts pro rata.

After the payments aforesaid shall have been made the said trustee will apply the balance on hand, if any, in payment and satisfaction of all other the creditors of said Wroth & Fullerton, provided the said last-mentioned balance will be sufficient therefor; but if the same should be insufficient then apply the same pro rata.

In testimony whereof, we hereunto subscribe our names and affix our seals.

WM. L. WROTH. [SEAL.]
ROB. B. FULLERTON. [SEAL.]

Test: BENJ'N F. NALLS.

STATE OF MARYLAND, *City of Baltimore, sct:*

I hereby certify that on this twenty-seventh day of October, in the year eighteen hundred and sixty-two, before me, the subscriber, a justice of the peace of said State, in and for the city aforesaid, personally appeared
179 William G. Wroth and Robert B. Fullerton and acknowledged the foregoing deed to be their respective acts; and at the same time did also appear James McCreary, and made oath in due form of law that the consideration set forth in the foregoing deed are true and bona fide as therein set forth.

BENJ'N F. NALLS.

Which deed has the following endorsements, to wit:

Received for record 27th October, 1862, at 2¾ o'clock p. m. Same day recorded among the Chattell Records of Baltimore City in Liber G. E. S. No. 29, folio 446, &c., and exam'd, per—

GEO. E. SANGSTON, *Clk.*

Admitted to be the original deed and recorded as it purports.

S. T. WALLIS, *for Compl'ts.*

Afterwards, to wit, on the said first day of June, in the year last aforesaid, William H. Drayton, esquire, of Philadelphia, commissioner named in the commission issued in this case, made return of the said commission, together with his proceedings under and in pursuance thereof, which are in the words and of the tenor following, to wit:

Commission.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To William H. Drayton, of Philadelphia, esq'r, greeting:

[SEAL.] Be it known that you are appointed commissioner to examine evidences in a cause now depending in the circuit court of the
180 United States for the fourth circuit, in and for the Maryland district, between George A. Sutherland, plaintiff, and William Watson and others, defendants:

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendants, and that you examine them upon their corporal oath, to be by you administered, upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing you send the same, with this commission closed, under your hand and seal to the said circuit court with all convenient speed.

Witness the Honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty three.

JAS. W. CHEW, *Clk C. Ct.*

Issued 21 May, 1864.

P. McL.

Commissioner's oath.

You shall according to the best of your skill and knowledge truly, faithfully, and without partiality to any or either of the parties, take the
181 examination and depositions of all and every witness or witnesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either party. So help you God.

WM. H. DRAYTON.

Sworn to and subscribed before me this 24th day of May, 1864.

[SEAL.] CHARLES SERGEANT,

U. S. Commissioner appointed by the Circ't C't U. S., E. D. P.

Return.

Depositions of witnesses produced, affirmed, and sworn and examined on the 24th and 30th days of May, in the year of our Lord eighteen hundred and sixty-four, at the office of W. H. Drayton, the commissioner, in the city of Philadelphia, in the commonwealth of Pennsylvania, by virtue of a commission issuing out of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to the said William H Drayton directed, for the examination of witnesses in a certain cause depending in said court, wherein George A. Sutherland is plaintiff and William Watson and others defendants.

Robert M. Early, a witness produced and affirmed on the part of the defendant, deposeth as follows:

182 To the first interrogatory on the part of said defendant he saith: My age is twenty-six years; I reside at 245 North Sixth street, Philadelphia.

2. To the second interrogatory he saith: I only know Mr. Sutherland and have but a business acquaintance with him.

3. To the third interrogatory he saith: I don't know Mr. Fullerton. I know that there was such a firm in the city of Baltimore.

4. To the fourth interrogatory he saith: I was not a member of any firm in 1862. In 1863 I was a member of the firm of Robert Pollack & Co. The firm did business in Philadelphia.

5. To the fifth interrogatory he saith: I have some knowledge of the matter of this interrogatory so far as Philadelphia and the near trade was concerned during these periods. About a year previous to October, 1862, goods were sold on six months' credit to reliable parties. From Oct, 1862, to about December, 1863, a large proportion of the business was done for cash or a very short credit on sales of merchandise; only on credit at all to the best class of customers. To the Baltimore and Washington market we sold on thirty days' credit; in some instances as long as four months in Philadelphia. This was the practice of our house. I can't speak of other houses I think much longer credits were given during the years 1858, 1859, and 1860. I can't say that I can give a reason for this change of practice.

183 6. To the sixth interrogatory he saith: I have sold George A. Sutherland merchandise since the first of November, 1862. The number of times, the length of credit, (for our sales were all on credit,) the amounts sold at each time, and when the payments were made, are things that I cannot speak of from memory. They appear in a copy our book, which I produce and which was copied by me, (annexed Schedule A) We were not to receive any security for the payment thereof.

7. To the seventh interrogatory he saith: We were applied to by Geo. A. Sutherland himself, or, more properly, we invited him to come in and purchase of us.

8. To the eighth interrogatory he saith: I know of nothing more than I have already answered.

ROB'T M. EARLY.

W. H. DRAYTON, *Comm.*

To the first cross-interrogatory on the part of the complainant he answers as follows: The firm of which I am a member are not creditors of Wroth & Fullerton.

2. To the second cross-interrogatory he answers: I have already answered we have no such claim.

3. To the third cross interrogatory he saith: I have answered we sold to Sutherland since November, 1862, but I also answered that we received no security.

184 4. To the fourth cross-interrogatory he answers: I answered this interrogatory by saying that no one applied to us to sell goods to George A. Sutherland, but that we invited him to purchase of us.

To the fifth interrogatory he answers: We have no interest, directly or indirectly, in this proceeding. None of the parties are indebted to us in any way.

ROB'T M. EARLY.

Examination taken, reduced to writing, and by the witness subscribed and affirmed to this twenty-fourth of May, A. D. 1864.

WM. H. DRAYTON, *Commissioner.*

William L. Stewart, a witness produced and sworn on the part of the defendant, deposeth as follows:

1. To the first interrogatory on the part of said defendant he saith: I am thirty-six years old, and live at the Continental Hotel, in Philadelphia.

2. To the second interrogatory on the part of said defendant he saith: I

know Geo. A. Sutherland. I know some of the firm of William Watson *et al.* I know Mr. Watson. I know some other members, but don't recall their names now.

3. To the 3d interrogatory on the part of said defendant he saith: I know both Wroth and Fullerton.

185 4. To the fourth interrogatory on the part of said defendant he saith: I was during the times enquired about a member of the firm of W. S. Stewart & Co., at 305 Market street, Philadelphia.

5. To the fifth interrogatory on the part of said defendant he saith: I have a knowledge of the condition of commercial credit on the dry-goods business during the period enquired about. There was very little credit given during that time. Credit was not usually given for more than thirty days, which is generally considered cash. Some did not give more than ten days; and there was a time during the period when it was cash on delivery. Those persons who were known to be best off got the longest credit. It is hard to answer this question precisely, because the best house preferred to pay cash as a general rule. It was very different from the years 1858, 1859, and 1860. During those years six months was the usual credit. The reason why credit was not during this period as before was owing to the disturbed condition of the country.

6. To the sixth interrogatory on the part of the defendant he saith: Our firm has since the period enquired about sold merchandise to Geo. A. Sutherland. I can't answer how often we sold, or the amount or the length of credit or when payments were made; but I produce and ask to have an-

186 nexed a transcript from our books, (produced and marked Schedule B,) which is a true, accurate transcript. We received no security for the payment, and were to receive none.

W. T. STEWART.

W. H. DRAYTON, *Comm'r.*

7. To the seventh interrogatory on the part of defendant he saith: He has never applied to us to sell him goods on credit, nor has he ever applied to me immediately.

8. To the eighth interrogatory on the part of defendant he saith: I can think of nothing more than I have said.

1. To the first cross-interrogatory on the part of the complainant he saith: Our firm is a creditor of Wroth & Fullerton. The amount is seven hundred and eighty-eight 02-100 dollars. We have taken no steps to recover the amount due. We have employed no counsel and have taken no steps whatever, and have no arrangement or understanding with any other creditors for the recovery of our debt against them, nor have we arranged to employ counsel to prosecute the same.

2. To the second cross-interrogatory on the part of complainant he saith: We have no understanding or arrangement with any person in regard to our claim against Wroth & Fullerton or its collection.

187 3. To the third cross-interrogatory on the part of complainant he saith: In answer to the third interrogatory I stated that we took no such security.

To the fourth cross-interrogatory on the part of complainant he saith: I have said he never did apply to us to sell goods to him on credit, and can produce nothing.

5. To the fifth cross-interrogatory on the part of the complainant he saith: I have no direct interest in this proceeding. If the goods of George A. Sutherland are made liable for the debts of Wroth & Fullerton I suppose I may derive some benefit as a creditor of theirs, but don't see exactly how, as I am no party to this suit.

W. S. STEWART.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this thirtieth day of May, A. D. 1864.

WM. H. DRAYTON, *Commissioner.*

SCHEDULE A.

Geo. A. Sutherland in account with R. Pollack & Co.:

1863.		DR.	
May	22.	Mdse., 30 days, 4 per cent	$147 65
	23.	Do	84 00
	25.	Do	4 00
		Do	59 38
188		Do., nett	47 58
	30.	Do., nett	65 78
Sept.	10.	Do	417 30
		Do, nett	60 13
		Do	6 50
Oct.	9.	Do	601 96
		Do., nett	62 78
Nov.	2.	Do	595 52
	4.	Do	61 50
	6.	Do	41 50
Dec.	14.	Do	76 45
			2,332 03

1863.		CR.	
July	25.	By cash 5 22, 23, 25	$342 61
Aug	22.	Do., 5-30	65 78
Sept.	18.	Do., 3-10	483 93
Oct.	20.	Do., mdse	4 75
1864.			
Jan.	8.	By cash on account	300 00
	15.	Do	300 00
	25.	Do	400 00
Feb.	13.	By cash, bal	434 96
			2,332 03

Copied from the ledger of R. Pollack & Co. by me

ROB'T M. EARLY.

At the execution of the foregoing commission this paper was produced by the witness Robert M. Early, and is the document referred to by him as copied from the books of the firm of which he is a member

W. H. DRAYTON, *Comm'r.*

SCHEDULE B.

Mr. G. A. Sutherland, Balto., Md., Dr. to W. S. Stewart & Co., 305 Market street, Philad'a:

1863.					
Feb'y	27.	Mdse., 60 day, 3 per cent.,		A	$477 00
M'ch	13.	Mdse., 30 days, net cash,		B	140 60
	18.	Do.	do.	B	27 00
April	13.	Do.	do.	C	36 56

1863.					
	May	7.	Mdse., 30 days, net cash, A		$29 29
189	Sept.	11.	Mdse., 30 d'y, cash, 4 per cent., E		96 03
	28.	Do.	do.	F	269 26
Oct.	9.	Do.	do.	G	94 36
Nov.	14.	Do.	do.	H	166 70
					1,336 80

Cr.

Ap'l	20.	Cash, B		$167 60
Ap'l	30.	Cash, A		477 00
May	28.	Cash, C		36 56
June	15.	Cash, A		29 29
Sept.	24.	Cash, E		96 03
Nov.	6.	Cash, F		169 26
Nov.	13.	Cash, G		94 36
1864.				
Jan.	4.	Cash, H		166 70
				1,336 80

At the execution of the foregoing commission, this paper was produced by the witness Wm. S. Stewart, and is the document referred to by him as copied from the books of the firm of which he is a member.

W. H. DRAYTON, *Comm'r.*

And afterwards, to wit, on the 4th day of June, in the year last aforesaid, the following agreement and admission were filed in court here, to wit:

Agreement.

Circ't court of the U. S.

SUTHERLAND *vs.* WATSON AND OTHERS. } In equity.

190 It is agreed to the same effect as if from under the commission, that William G. Wroth, spoken of in the evidence, was requested by the solicitor of the complainant to make an effort to find security on the injunction bonds for the complainant, said solicitor having pressed said Wroth to do so, on the ground that it was his duty to do what he could to protect Sutherland's property from being sacrificed under execution for debts of Wroth & Fullerton.

It is further agreed that the defendants gave indemnity bonds to the marshal before the levy, on the goods in the store No. 85 Baltimore st.

S. F. WALLIS, *for Compl't.*
P. McLAUGHLIN, *Sol'r for Defendants.*

Admission.

Circuit court of the U. S.

SUTHERLAND *vs.* WATSON AND OTHERS. }

It is admitted in the above-entitled cause that the books referred to in the testimony of William Nagle shall be considered as in the record to the

same effect as if they had been produced by the witness and filed with the commission.

S. T. WALLIS, *Sol'r for Compl't.*
P. McLAUGHLIN, *Sol. for Defendants.*

Afterwards, to wit, on the 11th day of June, in the year last aforesaid, the court here made and passed the following decree, to wit:

191 *Decree.*

Circuit court of the United States for the 4th circuit and district of Maryland, April term, 1864.

GEORGE A. SUTHERLAND
vs.
WILLIAM WATSON AND OTHERS. } In equity.

This cause standing ready for hearing, and being submitted, after oral arguments by counsel for the parties, the proceedings were fully read and considered. It is thereupon this eleventh day of June, in the year eighteen hundred and sixty-four, by this court adjudged, ordered, and decreed that the injunction heretofore issued in this cause be, and the same is hereby, made and declared to be perpetual, and that the defendants pay to the complainant his costs of suit to be taxed by the clerk.

WILLIAM F. GILES.

From which said decree the said defendants, by their solicitor aforesaid, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

192 *Appeal bond.*

Know all men by these presents that we, Robert Moore, Charles Roche, and Ross Campbell, are held and firmly bound unto George A. Sutherland, or to his certain executors, administrators, or assigns, in the full and just sum of three hundred dollars, to which payment, well and truly to be made, we bind ourselves and every of us, our and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 15th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas by a decree of the circuit court of the United States for the fourth circuit court, in and for the Maryland district, passed in a cause therein on eleventh day of June, 1864, between George A. Sutherland, complainant, and William Watson and others, defendants, the said court passed a decree that the injunction heretofore issued in this cause be, and the same is hereby, declared perpetual.

And whereas the said William Watson and others are about to appeal from said decree to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the above bound Robert Moore and others shall not cause a transcript of the record and proceedings of the said order to be transmitted to the Supreme Court of the United States within the time required by law, and prosecute the same with
193 effect, and pay unto the said George A. Sutherland, his executors, administrators, or assigns, in case the said decree shall be affirmed, as well the costs and charges decreed by the said circuit court to be paid by the

said William Watson and others, as also all costs and charges that shall be awarded by the Supreme Court of the United States, then this bond to be and remain in full force and virtue in law.

ROBERT MOORE. [SEAL.]
CHAS. M. ROCHE. [SEAL.]
ROSS CAMPBELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
PATRICK MCLAUGHLIN.

Which bond is thus endorsed, to wit:
Bond approved 27th July, 1864.

WILLIAM F. GILES.

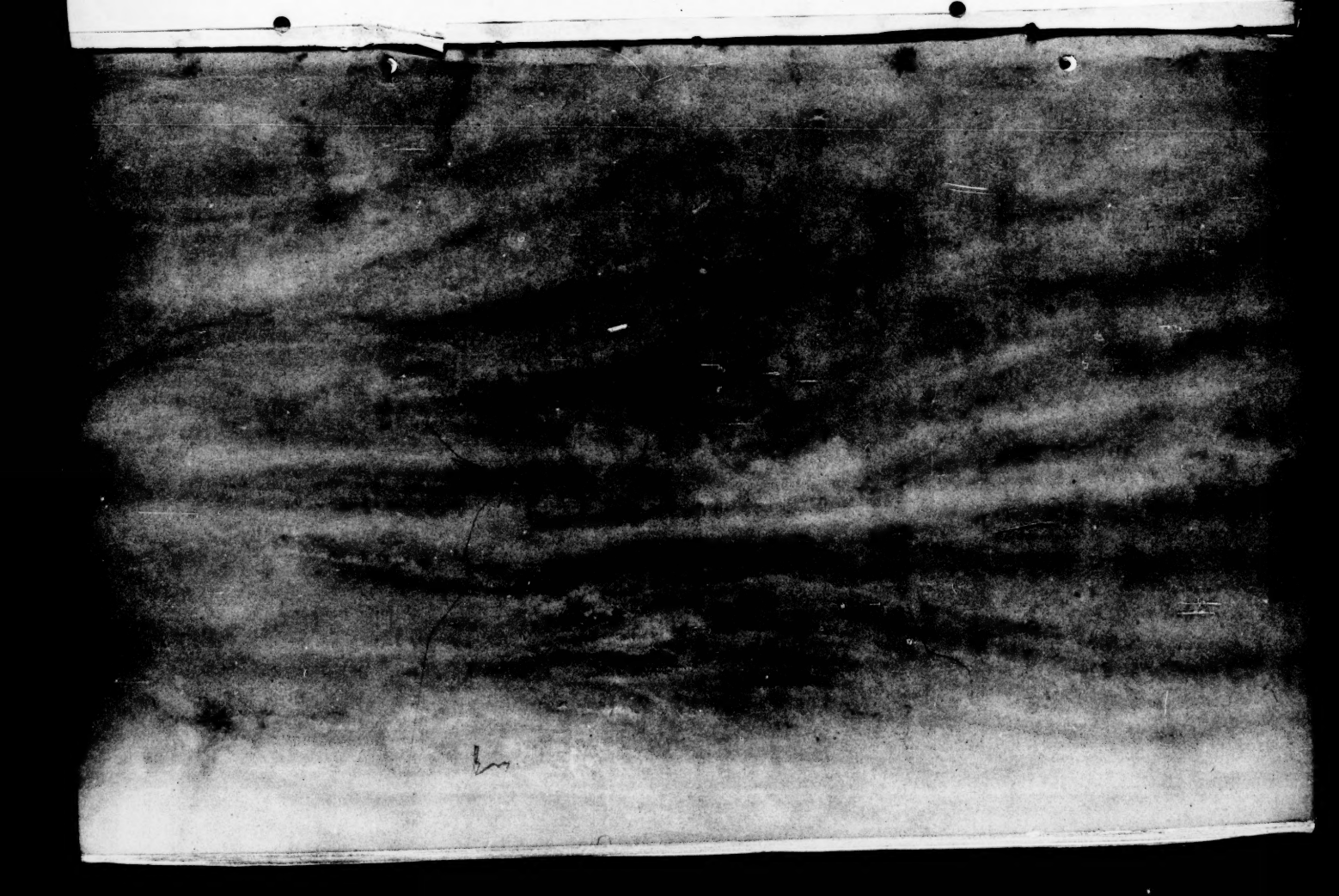
THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

I, James W. Chew, clerk of the circuit court of the United States for the fourth circuit, in and for the Maryland district, do hereby certify that the aforegoing is a true copy of the originals on file among the record and
194 proceedings of the said circuit court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this sixth day of August, in the year of our Lord one thousand eight hundred and sixty-four.

JAMES W. CHEW, *Clerk Circuit Court.*

Filed January 26, 1865.



WILLIAM WATSON *et al.*

vs.

GEORGE A. SUTHERLAND.

IN THE

Supreme Court

OF THE UNITED STATES.

Appellants' Statement and Points.

On the 14th of December, 1863, the appellee filed his bill in the Circuit Court of the United States for the Fourth Circuit, in which he states that the appellants, William Watson and Walter Magee, of the State of New York, obtained a judgment in said Court, at the April Term in 1863, for the sum of $5,475.95, with interest from the 8th of November, 1862, and costs, against a certain William G. Wroth and Robert B. Fullerton. That William Loeschigh and Otto Weisendonck, Gustavus Kutler and William Lukenmeyer, also citizens of the State of New York, at the November Term of 1863, obtained a judgment in said Court, against said Wroth and Fullerton, for $2,208.49, with interest from the 7th January, 1863, and costs; and that the said complainants respectively caused to be issued on said judgments writs of fieri facias, and placed the same in the hands of the Marshal of said District, to be executed; and combining and confederating with said Marshal, ordered and directed the said Marshal to lay the same upon merchandise, the whole stock in trade of the appellants, retail dry goods merchants, in store No. 85 West Baltimore street, in the City of Baltimore: and the said Marshal being indemnified, levied on said stock and took possession thereof.

Record, p. 1.

The said appellant avers that he is the sole and exclusive owner of the goods so levied upon, and was at the time of the issue of the writs aforesaid; and that the said Wroth & Fullerton then were, and, at the time of filing said bill, were without any interest in said merchandise.

Record, pp. 1 and 2.

He further states that he was engaged as a retail dry goods merchant, in said store, No. 85 West Baltimore street, since the month of October, 1862; that by his industry and attention to business, he had established for himself a profitable and increasing trade: that his stock so seized was worth about $20,000: was purchased, for the most part, in New York and Philadelphia, and not all paid for; and that for the means by which he is to pay for the same, he is dependent upon the sales of said merchandise; and that if the said property be taken from him, or the sale thereof long hindered, that he, the appellee, would not only be rendered insolvent, but that his credit would be destroyed, his business broken up, and his prospects in life, as a young man, be blasted.

Record, p. 2.

He then states, the injury so done him, if carried out, would be irreparable, and would be incapable of compensation by damages at law; and especially so, as the said appellants are not residents, and that he, the appellant, has no reason to know that the Marshal is pecuniarily sufficient for the large damage he would be entitled to recover for so serious an injury. Prayer for injunction.

Record, p. 2.

On the 22d day of April, 1854, William Watson and Walter Magee filed their answer to said bill, (Record, p. 7,) in which they state that they, the said respondents, admit that they, the said respondents, did obtain judgment against said Wroth & Fullerton, as stated in said bill, on contracts entered into before the 10th day of May, 1861.

Record, p. 6.

They also admit that they caused a writ of fieri facias to be issued to the Marshal of said District, and directed him to levy said writs on sufficient of the merchandise in said store, 85 West Baltimore St., to satisfy said judgment and costs of said levy, and that the Marshal took into his possession sufficient of the merchandise in said store to satisfy said judgment.

Record, pp. 6, 7.

They deny, however, that the Marshal removed the merchandise so levied upon from said store.

Record, p. 7.

They admit that the stock of goods in said store, at the time of making said levy, was worth $20,000, and perhaps more. They deny that said stock of goods were the goods of the appellees; and whether the appellee succeeded in establishing for himself a profitable trade, &c., before the levy of said writs of execution, they are unable to admit or deny, as they have no knowledge in reference thereto.

Record, p. 7.

They state they were informed and believed that at the time of making said levy, the said appellee was acting as a retail dry goods merchant, but they deny that the stock of goods in his possession was his property; and they also deny that the profits of the business in which he was engaged was for his use and benefit, but that the said goods so levied upon were, at the time of making said levy, the property of William J. Wroth.

Record, p. 7.

They say they are unable to admit or deny the effect of said levy and detention in sale of said goods might have on the condition or prospects of the complainant, or whether the said levy, detention and sale might bring about his insolvency, or the means by which he expected to pay for such of said goods as were not paid for at the time of making said levy, or how far he was dependent on the proceeds of the sales he expected to make of the goods so levied on to pay his debts, as they have no knowledge whatever in reference thereto.

Record, p. 7.

They further state that there is no reason to suppose that the levy aforesaid, as made by said Marshal, would work irreparable injury to the appellee, even if the goods so levied on were the property of the complainant, as property of the same description, quantity and quality could be easily obtained in market, which would suit the appellee's purpose as well as those levied upon, and that a jury would have ample power, on a trial at common law, in an action against the respondents, now appellants, or against the Marshal on his official bond, to give a verdict commensurate with any damages the said appellee could sustain by the levy and sale of the goods aforesaid.

Record, pp. 7, 8.

They admit that they are now residents of Maryland, but deny that the fact of their being non-residents would give a Court of Equity jurisdiction of this cause.

Record, p. 8.

On this point, see 7 Md. Rep., 393, Beal vs. Brown.

They also state that the Marshal had given bond in the penal sum of $20,000, which was ample security for any damage that could result to the appellee from the levy and sale of said goods.

Record, p. 8.

They further shew that the said appellee is a young man who came to this country from Ireland a few years ago; that when he came to this country he was penniless; that since he came here he has been salesman in a retail dry goods store, at a small salary, so low as to have rendered it impossible for him to have saved from his earnings any considerable sum of money before making the purchase hereinafter mentioned from Wroth & Fullerton.

Record, p. 8.

They state that they are informed and believe, and they aver that said Wroth & Fullerton suspended payment in March, 1861; that at the time they suspended payment, their stock of merchandise was worth from $60,000 to $70,000, and that their book accounts were worth from $25,000 to $60,000, and that they were indebted to the amount of about $80,000 to $85,000.

They say that the Legislature of Maryland passed acts staying executions from the 10th of May, 1861, until the 1st of November, 1862. They charge that previous to the 1st November, 1862, said Wroth & Fullerton had determined to pay no part of the judgments rendered against them, and that from the 10th May, 1861, until the 1st November, 1862, judgments, amounting to between $30,000 and $40,000, had been rendered against them.

Record, p. 9.

They further state, from the date of the suspension of said Wroth & Fullerton, until the 27th of October, 1862, they sold the greater portion of said goods, and collected a great many of said debts, and paid only a small portion thereof to their creditors, but retained the greater portion thereof and secreted the same for their own use and benefit, with a portion of which the goods so levied upon were paid for.

Record, pp. 8, 9.

They further charge that at the time of making said purchase by the appellee, from said Wroth & Fullerton, he had knowledge that said Wroth & Fullerton had suspended payments as aforesaid; that the said judgments last aforesaid had been rendered, and that the stay laws aforesaid would expire on the 1st day of November, 1862.

Record, p. 9.

They further charge that the appellee, conspiring with said Wroth & Fullerton, to hinder and delay their creditors of their just and lawful debts, on the 27th of October, 1862, made a purchase of said Wroth & Fullerton.

Record, p. 13.

They say that said purchase was not made for the benefit of said appellee, but for the use and benefit of said William G. Wroth; and that the said appellee, from the time of making said purchase until the time of making said levy, had been conducting said business at store No. 85, for the use and benefit of said Wm. G. Wroth, and at the time the Marshal levied on said goods, the goods so levied upon were the property of said William G. Wroth, and that the appellee held himself out as the proprietor of said business, and as the owner of said goods, for the purpose of protecting the goods of said William G. Wroth from the creditors of said Wroth & Fullerton, and with the view, intent and purpose of hindering, delaying and defrauding them in the payment of their debts. They deny all combination and confederacy with which they are charged, and pray that the injunction issued in this case be dissolved, and that the bill be dismissed.

Record, p. 9.

The answer of the other defendants follow, and is pretty nearly similar to this, and they adopt this synopsis as theirs.

A commission issued to F. Pinkney, Esq., to take testimony.

Record, p. 14.

For its execution, see p. 17.

The case made by the appellee, by his bill and evidence, is the case of an injunction to restrain a single trespass, on goods having no particular value in themselves, to the complainant, or to any one else, more than other goods of the same value, description and quality would have.

The evidence of the appellee was confined to showing that he was in possession of the goods upon which the appellants levied their respective executions, as the goods of Wroth & Fullerton.

The first question presented by this record is, does the bill and the evidence make a cause sufficient to give jurisdiction to the Circuit Court sitting in equity?

After the many and positively expressed discussions of this Honorable Court, we should think this question was no longer open. We will refer only to the acts of Congress and a few of the decisions upon this subject, for the reason, more particularly, as this question is to be determined upon the construction of the Constitution and acts of Congress without regard to any General State Law, and there is no Local Law in Maryland which affects it.

See acts of Congress 1789, ch. 20, ss. 11, 16.

In Baldwin, 294, Baker vs. Biddle, the Court, at page 403, says: "By the 2d sec. of the 3d art. of the Constitution, the judicial power of the United States is extended to all cases in equity between persons therein described. It also authorizes Congress to establish inferior courts." Again, he says: "By the 16th sec. of this act, it is declared that 'Suits in Equity shall not be sustained in either of the courts of the United States in any case where plain, adequate and complete remedy at law may be had;' again, at 404, the court says; 'By the adoption of the 7th amendment to the Constitution proposed by Congress at the same session as the judiciary act, their intention is most manifest to connect the 16th sec. with this amendment, which declares 'in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved.' By the adoption of this amendment, the people of the States and Congress have declared that the right of jury trial shall depend neither on the legislative or judicial discretion.'"

At p. 421 of the same case, the court in difcussing the question of the propriety of the new principles introduced into chancery, jurisdiction and practice, says: "We cannot adopt any rules or principles of law which are in contradiction to those which were settled and established before the revolution, 5 Peters 280, nor extend our jurisdiction in amount beyond the rules prescribed by the Supreme Court in 5 Peters 503; they result from the provisions of the Constitution and the judiciary act which cannot be affected by any subsequent adjudications of any courts in England, or in those States which adopt them."

We believe that the boundary between the jurisdiction of Courts of Law and Courts of Equity, have been clearly drawn in this decission, which only adopts the decisions of this Court, previous thereto, on

the same subject, and which this Court has followed since.

In 5 Peters 280, the court says: "A check has been wisely drawn against the assumption of equity jurisdiction by any new rule in the English courts since the Revolution."

In 19 Howard 271, 278, Hipp vs. Babin, this court lays down the law thus: "And, though the admission of a party to a suit is conclusive as to matters of fact, or may deprive him of the benefits of privilege, which, if insisted on, would exempt him from the jurisdiction of the courts, yet no admission of parties can change the law or give jurisdiction to a court in a cause of which it hath no jurisdiction."

Again, at p. 278, the court says: "The practice of the courts of the United States, correspond with that of the Chancery of Great Britain, except where it has been changed by rule, or modified by local circumstances or local convenience. The courts have denied relief in cases in equity, where the remedy at law has been plain, adequate and complete, though the question was not raised by the defendants in their pleadings, nor suggested by the counsel in their arguments."

In 2 Black's R., 499, the court reiterates the above doctrine, at p. 509 the court says: "The equity jurisdiction of courts of the United States is derived from the Constitution and laws of the Unites States. Their power and rules of decission are the same in all States. Their practice is regulated by themselves, and by rules established by the Supreme Court. This court is invested by law to make such rules. In all these respects they are unaffected by State legislation."

In 1st Wallace 16, 22, Wright vs. Ellison, this court repeats the same rule; the court says: "But this is a suit in equity. The rules of equity are as fixed as those of law, and this court can no more depart from the former than the latter, unless the complainant has shown a right to relief in equity, however clear his rights at law, he can have no redress in this proceeding. In such cases the adverse party has a constitutional right to a trial by jury. The objection is one, though not raised by pleading or suggested by counsel, this court is bound to recognize and enforce."

With these authorities, we conclude that the equity jurisdiction of courts of the United States will appear, when we ascertain what were the jurisdiction of the Chancery Courts in England at the time of the Revolution.

Before proceeding with this examination, we desire to call the attention of the court especially to the facts, that there is not a particle of testimony in the record, that tends to show that any of the defendants

are unable to pay all damages for which they might possibly be liable, by reason of the levy of said execution upon said goods and a sale thereof.

Let us now see what the law of England was at the time of the Revolution, as to granting injunctions to restrain the sale of personal property.

We admit there are cases in which a Court of Equity in England would, at the time of the Revolution, interfere to prevent the sale of personal property, or to cause its delivery: but these cases must have some peculiarity in the character of the property—a peculiarity of value to its owner, or the peculiarity of the right in which it has been held.

But, as the rules governing Courts of Equity in England in such cases are so clearly laid down in 2 Story's Eq. J., §709, we are induced to transcribe it here. He says "But there are cases of personal goods in which by the remedy at law damages would be utterly inadequate, and leave the injured party in a state of irremediable loss. In all such cases Courts of Equity grant full relief by requiring a specific delivery of the thing. This may occur when the thing is of peculiar value and importance; and the loss of it cannot be fully compensated in damages where withheld from the owner. Thus where the lord of a manor was entitled to an old altar piece made of silver, and remarkable for a Greek inscription and dedication to Hercules, as a treasure trove within his manor, and it has been sold by a wrong doer, it was decreed to be delivered up to the lord of the manor as a matter of curious antiquity, which could not be replaced in value, and which might, by being defaced, become greatly depreciated. So where an estate was held by the tenure of a horn, and a bill was brought by the owner to have it delivered up to him, it was held maintenable, for it constituted an essential muniment of his title. The same principle applies to any other chattel whose principal value consists of its antiquity, or of its being the production of some distinguished artist; or of its being a family relic or ornament, or heir-loom, such for instance as ancient gems, medals and coins, ancient statutes and busts, paintings of old and distinguished masters, or even those of a modern date having a peculiar distinction and value, such as family pictures and portraits and ornaments, and other things of a kindred nature." See the notes in which he refers to the authorities. This is the summing up of Mr. Justice Story of cases in which a Court of Equity will take jurisdiction for the reservaation and delivery of personal property.

See also the authorities referred to in this section.

Need we say that all other classes are to be considered as excluded, such as brown muslin, canton flannel. or a paper of pins or needles, in a retail dry goods store.

The good will of a business which is defined in Cruttwell vs. Lye, 17 Vesey, 335, to be the probability that the old customers will resort to the old place, has not being in it so special or peculiar as to warrant the interference of Chancery for its protection. Damage adequate to the injury done to it is recoverable at law.

Zeigler vs. Sentzner, 8 Gill & Johnson, 158
Baxter vs. Connolly, 1 Jac. & Walk. 556.
Bozen vs. Farlow, 1 Mer. 459.

The books are full of cases brought at law against sheriffs for taking the goods of a stranger on execution: and they show that ample damages are recoverable by the injured plaintiff, according to the circumstance of each case.

Mayne on Damages, [Law Library,] 225.
8 Meeson and Welsby, 133.
14 Eng. Com. L. Rep. 341.
17 Eng. Com. L. Rep. 476.

But should the Court differ with us on the question of jurisdiction, we still insist that the levy by the Marshal was lawful, as the goods levied on were the property of William G. Wroth.

The appellants by their answer insist that the property so levied upon was at the time of the levy the property of William G. Wroth, one of the judgment debtors, and that Sutherland is merely used as a cover to defraud them, and they prove—

That in October, 1862, Sutherland had no means with which to purchase a stock of goods; and in confirmation thereof, the Record will show the following facts, viz:

William G. Wroth and Robert B. Fullerton, the judgment debtors, suspended payment on the 21st March, 1861, (admission, p. 46.) At the time of their suspension, their stock of goods was worth from $60,000 to $70,000. (John E. Kitson, p. 26.)

This stock of goods enhanced in value from the 21st of March, 1861, when they suspended, until the 27th October, 1862, when they nominally retired, from 25 to 100 per cent. (John H. Cole, p. 31.) Say it enhanced $20,000 from the time they suspended, 21st March, 1861, until 27th October, 1862, when they nominally retired from business, they collected debts contracted before the 21st March, 1861, amounting to $11,821.75. (William Nagle, p. 41.) Therefore, their assets would amount to

Stock on hand about	$65,000.00
Enhanced value of goods about	20,000.00
Collections from the time they suspended	11,821.75
Total Assets	$96,821.75

From the time they suspended they paid.....$20.999.26
(William Nagle, pp. 41–49.)
They lost on the sale of the remnant of their stock, it is said..... 5,500.00

Deducting this sum of.....$26,499.26
from $96,821.75, there would be unaccounted for in the hands of Wroth & Fullerton, and withheld from their creditors on the 1st of November, 1862, about $70,322.49.

When they suspended payment, 21st March, 1861, their indebtedness amounted to..... $80,011.33.
(William Nagle, p. 41.)

Since when, they paid.....$20,999.21

(Nagle, p. 41.) $69,012.07

From this it would appear, on the 1st November, 1862, they owed $69,012.07, and had assets amounting to about $70,322.49.

What has been done with these $70,322.49 is a proper matter for enquiry in this case, when the circumstances of the parties are taken into consideration.

On the 21st March, 1861, George A. Sutherland may be said to have been penniless.

In 1852 he went into the employ of Robert Craig, and at that time was without any means; his salary was $9.00 a week.

(Rob't Craig, p. 20—Jno. Kitson, p. 25.)

In March, 1857, the appellee was in the employ of Wroth & Fullerton, at from $400 to $500 a year: (Benjamin R. Yeo, pp. 32, 33,) and at that time it would cost a young man about $400 to $500 a year to live.

(Thomas M. Green, pp. 33, 34.)

It appears that Wroth & Fullerton had a claim against a Lieut. S. G. Baylor, who was stationed at Fortress Monroe, and that they assigned this claim to the appellee on the 31st October, 1862, for the sum of $1,337.08—for money they owed him, and for his salary. (R. W. Stover, p. 52 and 54—Assignment, p. 42.) This is all the estate Geo. A. Sutherland, the appellee, had on the 31st day of October, 1862, as the purchase of the stock which is set up, is said to have been made on credit.

The appellee claims that, on the 1st day of November, he opened store on his own account, on a hard stock of old goods, the remnants of three succeeding firms, which, at cost price, amounted to $11,000, but which he purchased at $5,500, on a credit running from one to eighteen months.

See the notes, pp. 61, 62.

In February, 1863, his stock was very light, and most of the shelves filled with old boxes. (Emory O. Lee, p. 39.) Yet at the time the levy was made, the stock is said to have been worth $20,000. This was the 11th December, 1863, and is a concession by all parties; and it is said that between October, 1863, and the time of the levy, 11th December, 1863, the stock was reduced one-half, (Emory G. Lee, p. 19;) therefore, in October, 1863, the stock must have been worth $40,000. But from October, 1862, until December, 1863, there was no commercial credit. (John R. Cole, p. 31—Account, p. 63—Wm. A. Williar, p. 37—Wm. A. Dean, p. 34—E. Hurst, p. 36.)

The question presented by the Record, is, how did the appellee become able to have increased his stock from February, 1863, until Oct. 1863, in seven or eight months, from $5,000 or $6,000 to $40,000 worth? Was it not worth his trouble to have explained this?

We find the appellee in the employ of Wroth & Fullerton until they close shop. In the summer of 1862, he and Mr. Wroth occupy confidential relations to each other. They go carriage riding together. (John E. Kitson, p. 46.) Wroth & Fullerton sold the appellee $5,500 worth of goods on the 27th of October, penniless as he was, and when no such man could obtain credit, on a credit of from 1 to 18 months, what no reasonable man would at the time have done. (William A. Dean, p. 34; John E. Hurst, p. 36; William A. Williar, p. 37; Alexander Murdock, p. 38–39; F. Inloes, p. 40.)

Wroth becomes the employee of the appellee, and continues to be. E. J. Lee, p. 39.) There is no sign over the store door, although it contained $40,000 worth of goods in October, 1863, and the person who is represented as its owner is very popular in his business, and here is no other such store in Baltimore without a sign.

(John E. Kitson, p. 25—Jas. Owens, p. 49.)

When the appellee stood in need of security for his appeal bond, he had no friends on whom he could call. Wroth got the security for him.

(Hartman, pp. 21, 22—Admission as to Hall, p. 40.)

When Mr. Nagle carried McLaughlin's letter to Wroth, demanding the sales book, the appellee told him he was the attorney of Mr. Wroth, took the letter, appeared to read it, and told him that he could not have the book, as his attorney, Mr. Wallace, had it. When he called again, told him it was the stock book. When Mr. Nagle called again, Mr. Wroth handed him a sales book, the last entries were of 1858, one-third of which had been cut out; sai l the boys had torn the book for the purpose of making bills. (William Nagle, p. 44, 45. Mr. Wroth had previously stated to R. W. Stover, who had called for the sales book that Mr. Sutherland had used to record his sales.

(P. 55.)

Messrs. Wroth & Fullerton kept a sales book in 1861 and 1862.

(R. W. Stover, 55.)

In connection with the foregoing, it will be proper to observe that the Legislature of Maryland passed from the 10th of May, 1861, until 1st November, 1862, see acts of 1861, ch. 17; 1862, ch. 249, staying execution until 1st November, 1862.

Perhaps there is none of these circumstances which would alone be sufficient to make a case of fraud, but when considered altogether, few cases have so many circumstances so strongly indicating fraud.

From the evidence above referred to, we submit that it must be clear that the sale by Wroth & Fullerton to Sutherland, on the 27th of October, 1862, must have been fictitious, and made with the view, purpose and intent of defrauding their creditors.

Fraud may be said to consist in intent, and evidenced by actions or the omission to act.

In the examinations of such questions, great latitude is allowed in the investigation of the relations, actions, sayings, condition and circumstances of the parties charged therewith, both before and after the performance of the acts which are charged as fraud. On this question we desire to refer to the following cases:

7 Cow. 301, 302, 305; Jackson vs. Martin.

The court says: "The fraudulent intent cannot be questioned; the defendant was his son-in-law. Before the purchase the son-in-law was destitute of property. It was proved he paid $1,000, but no attempt was made to show where he obtained the money. He called a witness to see the money paid."

31 Maine, 93, 98, 100, Hartshorn vs. Eames.

The court says: "If anything improper is intended in a negotiation, it will seldom, if ever, be avowed; but everything tending to render it apparent, will be concealed."

25 Maine, 192, 199, Rollins vs. Nixon, the Court say: "The grantee had been a clerk for some time before the making of the deed. If he had means he might have shown it. I think he was called upon to do so. These suspicious circumstances called upon the defendants to remove the doubt that hung over themselves."

14 Mass., 245, 246, 249, 250, Bredges vs. Eccleston, the Court says: "His conduct, actions and declarations before such conveyance is made, are proper to be laid before the jury to enable them to ascertain whether the conveyance on his part is fraudulent. This may often be the best and only evidence."

7 Md. R., 537, 561, 562, Feigley vs. Feigley, the Court says: "We must look for the motives and designs of the parties in the surrounding circumstances."

23 Howard, 479, 480, Callan vs. Nathans, the Court say: "The defendants in their answer say it was paid. There was no person present when it was paid. There was no proof of payment given to sustain the answer. It would have been more satisfactory if they had given some proof of payment to sustain the answer, as there were circumstances tending to excite distrust. This proof was vital, in order to uphold a deed in other respects surrounded with suspicion. The evidence was in their possession."

7 Gill, 366, 377, Richards vs. Swan, the Court says: "There is no ascertained rule of law which fixes and determines what acts or declarations of a party shall, in all cases, be required to establish fraud; but, on the contrary, the badges of fraud may and often do vary, according to the intellectual capacity and moral depravity of the perpetrator, the design to be obtained, and the means by which it is to be accomplished."

J. MASON CAMPBELL,
PATRICK M'LAUGHLIN,
Solicitors for Defendants.

In the Supreme Court,

December Term, 1866,

No. 158.

GEORGE A. SUTHERLAND

ats.

WILLIAM WATSON, AND OTHERS.

Appeal from the Circuit Court for the District of Maryland sitting in Equity.

BRIEF OF THE APPELLEE.

THOS. S. ALEXANDER,
S. T. WALLIS,
Solicitors for Appellee.

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Appeal from the Circuit Court for the District of Maryland sitting in Equity.

BRIEF OF THE APPELLEE.

THIS appeal comes up from a Decree of the Circuit Court for the Maryland District, passed on the 11th of June, 1864, in Equity, continuing an injunction theretofore granted at the suit of Sutherland, the Appellee. (p. 74 of the Record.)

The Bill (p. 1,) was filed on December 14th, 1863, by Sutherland, a citizen of Maryland, against Watson and others, citizens of New York. Its purpose was to restrain the further execution of two writs of *fieri facias* issued by Watson and Magee, and by Loeschigh and others, on judgments by them respectively recovered in the same Court against Wroth & Fullerton; under which writs the Marshal had seized the whole stock in trade of Sutherland, in his store No. 85 Baltimore street, by order of the judgment plaintiffs confederating therefor. It alleges that Sutherland was the sole and exclusive owner of the property on

which the levy had been made, and that Wroth & Fullerton had not any interest whatever in it, directly or indirectly. It further charges that Sutherland had been in business, at the store in question, on his own sole account since October, 1862, and had by his industry and attention established for himself a large and increasing trade: that the stock levied upon, to the value of $20,000, or thereabouts, had been accumulated by him with a view to the business of the current season, having been purchased chiefly in New York and Philadelphia, and not yet all paid for; that the Appellee had no means of paying for it except from his sales, and that if the goods levied on should be taken from him, or his sales long interfered with, he would be rendered insolvent, his future credit destroyed, his business broken up, and his prospects in life, as a young man, blasted. It further charges that the injury which would result to him, would be irreparable and wholly incapable of compensation by damages at law, under the rules applicable to such cases, especially too as the Appellants were non-residents, and as the Appellee had no reason to believe that the Marshal was pecuniarily sufficient for the responsibility which he would incur. It prays the Court accordingly to restrain the further prosecution of the writs, and to enjoin the Appellants from further meddling or causing the Marshal to meddle with the goods in question till the Court's further order. General relief was likewise prayed, as well as substituted service on Patrick McLaughlin, Esquire, the Attorney of the Appellees in the writs in which the judgments were rendered. The Court ordered the service on Mr. McLaughlin, (p. 3,) and directed the motion for injunction to stand for hearing on or before Monday, December 14th. Mr. McLaughlin appeared for the Defendants, (p. 4,) and on the 15th of December, the injunction was ordered, on the Complainants filing bond, with leave to the Defendants to move to dissolve on two days notice, (p. 4.) Delay being interposed, there was a decree *pro confesso*, (p. 5,) under the rules, which was afterwards stricken out, (p. 6,) with leave to answer and

take testimony before May 15, 1864, when the cause was ruled for hearing.

The Appellants filed two separate answers, the judgment plaintiffs in the several cases at law answering respectively together. The answers, however, (pp. 6 to 13,) are substantially identical. They deny the confederacy alleged. They charge that the property levied on was not Sutherland's, but was really the property of William G. Wroth, one of the judgment Defendants, Wroth & Fullerton. Sutherland, they aver, was a young man who came to this country penniless a few years before, and had been only earning, as salesman in retail dry goods stores, a salary so small that it was impossible he could have saved enough, to make in good faith, the purchase which the answers charge him to have made, covinously, from Wroth & Fullerton. These last named parties, it is alleged, suspended payment in March, 1861, owing from $80,000 to $85,000, and having on hand goods worth from $60,000 to $70,000, and accounts worth from $25,000 to $30,000. Under the stay laws of Maryland, at that time existing, execution was stayed until November 1st, 1862, on judgments upon contracts anterior to May 10, 1861, but on payment of one-fifth of the debt and interest prior to 1st November, 1862, a further stay was given. Wroth & Fullerton, it is charged, had determined prior to November 1st, 1862, to pay no part of any of the judgments against them, which it is alleged amounted to between $30,000 and $40,000. Accordingly, it is said that they went on, after their failure, until October 27th, 1862, realizing their assets to a large amount, but paying over to their creditors only a small portion of the proceeds. The balance, it is charged that they retained and secreted for their own use, and with a portion of the same or the proceeds of a portion, purchased and paid for the goods levied on, in Sutherland's hands, under the executions enjoined in this case. These goods, it is charged that Sutherland, with knowledge of the fraudulent purposes ascribed to Wroth & Fullerton, fraudulently purchased from them, on Octo-

ber 27th, in execution of a combination and conspiracy with them to hinder, delay and defraud their creditors. Having so done, it is said that he opened a store, with this stock, at 85 Baltimore street. The Defendants further charge that Sutherland paid between $4,000 and $5,000 for this stock, while the whole amount of money which he then claimed to have was between $1,500 and $2,000. They finally sum up by charging as matter of information and belief, that Sutherland did not purchase the stock in question for his own benefit, but that of William G. Wroth, in whole or in part; that from the time of said purchase, he had been conducting the store in question for Wroth's benefit; that the goods levied on were not Sutherland's, but Wroth's, at the time of the levy, and that Sutherland made the purchase aforesaid, and allowed himself to be held out as the proprietor of the business, for the purpose of protecting Wroth's goods from the creditors of Wroth & Fullerton, and with the intent of hindering and defrauding them, &c.

The answers further deny that the injury to Sutherland would be irreparable even if the goods levied on were his, and insist that he could be amply compensated by damages at law. They aver also the pecuniary sufficiency of the Marshal and his bond to answer for all consequences.

After general replication filed, (p. 14,) commissions were issued by consent to take testimony in Baltimore, Philapelphia and New York, (pp. 14 and 16.)

It will be seen from this summary of the pleadings, that the issues of fact between the parties, are few and narrow.

The Appellee charges that his property has been illegally levied on and seized, under executions against third parties who had no interest whatever in it, and that unless the consummation of the wrong should be prevented by injunction, he will be irreparably injured.

The Appellees deny that the injury would be irreparable, even if it were a wrong. But they charge that the goods levied on are Wroth's, not Sutherland's. Whether they mean to charge

that the identical goods purchased, as they allege, fraudulently by Sutherland, on October 27th, 1862, constituted, in whole or in part, the very goods levied on in December, 1863, the answers are too obscurely drawn to make certain. But they, at all events, allege that such purchase was fraudulent, and that the store No. 85 Baltimore street, and the goods in it, were in Sutherland's name and possession merely as a fraud and a cover of fraud.

The Appellants opened the evidence on the 30th of April, 1864, by the testimony of Lee, one of his salesmen, (pp. 17, 18 and 19,) by whom he proved that the witness had lived with him fifteen months, in the store No. 85 W. Baltimore street, where he had been doing business as a retail dry goods merchant all that time. He proved also the levy, and the seizure of the goods, and that prior thereto S. had been doing a good business, which the executions had interrupted and impaired, (see answers 9, 10, 11 and 12, pp. 18 and 19.) The 8th answer of the witness (p. 18,) shews that of the stock Sutherland had when he went there, early in 1863, and of course including what was left of the purchase of Oct. 27th, 1862, not as much probably as one-twentieth was on hand when the levy was made.

After the establishing of this *prima facie* case, the Appellants examined a larger number of witnesses, from whom they elicited a mass of testimony which the Appellee will contend to have been for the most part irrelevant and inadmissible, but which if treated as in the case, to its fullest latitude, will not be found, it is believed, to affect in any way the integrity of the Appellee's position.

It consists mainly of the following classes:

1. Proof of acts charged to be fraudulent, on the part of Wroth & Fullerton, with which no connexion of Sutherland is shown, such for instance, as the evidence of Mr. Alnutt, (pp. 23 and 24,) introduced to prove that in 1860 or 1861, Wroth had promised to pay the proceeds of a particular collection to the Bank of Commerce, but afterwards retained the money himself, when collected.

2. Proof of the contents of the books of Wroth & Fullerton, *e. g.* the evidence of William Nagle, (pp. 41 to 45.)

It is assumed that no such evidence, even if criminatory to Wroth & Fullerton, which it is not, could avail as against Sutherland.

3. Testimony of merchants as to whether in a case supposed they would have regarded it as reasonable and prudent in Wroth & Fullerton, to make this sale of October 27th, 1862, to Sutherland, or probable that Sutherland would be able, with his alleged limited means to make such a purchase, and as to whether they would have made the sale in like case.

See testimony of Murdoch, (pp. 29, 30, 102.) Deane, (34, 12th Int.) Hurst, (p. 36.) Williar, (p. 37.) Inloes, (p. 40.)

The deduction of fraud, as a result from facts supposed to be suspicious, being matter for the Court and not for witnesses, such testimony will be assumed to be inadmissible.

All the interrogatories eliciting these classes of proof, were objected to at the time, and the exception was reserved, notwithstanding and at the time of cross-examination.

Evidence was further given by the Defendants, showing Sutherland's occupation and limited resources prior to the purchase in October, 1862: also that Wroth was intimate with Sutherland prior to the sale, and even rode out with him "once in a while in the afternoon," (Kitson's evidence, p. 46:) that no sign had been put over the store after Sutherland became the ostensible proprietor: that Wroth continued with Sutherland as his book-keeper and cashier after the latter purchased: that Mr. Hall, one of the sureties on Sutherland's injunction bond, was step-father of Wroth's wife, and was requested by Wroth to go on the bond, without which request he would not have done so: that once when a witness went to Sutherland's store to deliver a letter to Wroth, Sutherland had said he was Wroth's attorney, &c., &c. (p. 44.)

All of this proof, though competent as evidence of circum-

stances which might be regarded as suspicious, in a case of alleged fraud, will nevertheless be shown to be wholly ineffectual for that purpose, in face of the affirmative and conclusive proof produced by the Appellee, as follows—

It is shown:

1. That Sutherland, though originally without means, is a young man of intelligence, integrity, economy and industry, popular as a salesman, capable and likely to succeed as a business man, and having the esteem and confidence of all who know him. This is established, not only by the concurrent testimony of the witnesses summoned on his part, but by that of every witness acquainted with him who was called by the Appellants, viz:

Appellee's witnesses—

Lee (17th Int. p. 43.)
Stover, (15th Int. p. 53.)
Fitzpatrick, (10th Int. p. 58.)
Pearce, (14th Int. p. 59.)

Appellants' witnessess—

Craig, (1st Cross Int. p. 20.)
Hartman, (2d Cross Int. and 16th Int. p. 22.)
Kitson, (1st and 2d Cross Int. p. 27, Int. 22, p. 26.)
Murdoch, (2d Cross Int. p. 32.)
Yoe, (1st Cross Int. p. 33.)
Gibbons, (5th Cross Int. p. 51.)

2. That prior to the purchase of October, 1862, Sutherland had been in the habit of lending money from time to time to Wroth & Fullerton, his employers, and had credit with a banking institution of which he was a member which enabled him, by his endorsement, to obtain money for them, on their notes.

(See testimony of Stover, their book-keeper, 2d, 3d and 4th Int. p. 52, and 5th Cross Int. p. 54.)

3. That Wroth & Fullerton, in October, 1862, were distrained on for rent by Dryden, their landlord, to whom they owed $2,072 25, rent in arrear. (Dryden's evidence, p. 21. Stover's, p. 53, 11th Int.) Their stock on hand had become very small and poor, being the comparatively unsaleable remnants of three old stocks, constituting in mercantile language a "very hard stock," and very undesirable. (Fitzpatrick, Int. 6, p. 57. Kitson, 3d Cross Int. p. 27; 11th, 12th and 13th Cross Int. p. 47. Gibbon's 1st, 2d, and 3d Cross Int. p. 51. Dugan, 3d, 4th and 5th Int. p. 60. Stover, 5th and 6th Int. p. 52; 24th and 25th Int. p. 56.) Two or three weeks previously to the sale to Sutherland, they took stock and the goods at that appraisement reached only $11,000, in all. (Kitson, 15th Int. p. 26.)

This appraisement was carefully and fairly made, at 10 per cent. above the actual cost, by Wroth, his book-keeper Stover, and Mr. McCreery, one of the creditors, to whom Wroth & Fullerton shortly afterwards (p. 67,) made an assignment of their other assets. (Stover, 19th Int. p. 55; 22d, 23d, 24th and 25th Int. p. 56. Kitson, 15th Int. p. 26; 14th Cross Int. p. 47, and Int. 45, 46, 47, p. 48.)

Wroth & Fullerton advertised their stock for sale in the Baltimore Sun and American. No one examined it, to purchase, but Mr. Dugan, an experienced merchant, who did so thoroughly for two days and a night, and found it of such a character, that he was unwilling to offer more than 42½ cents in the dollar for it, on the invoice prices, which he considered a liberal bid. (Dugan, p. 60. Stover, Int. 7th, p. 53.)

Under these circumstances, Wroth & Fullerton agreed to sell it on time, to Sutherland, for 50 cents on the dollar, being $5,500, they being able to use his paper in payment of debts. The sale was made on October 21st, 1862, consummated on the 27th, and recorded in the day book on the 31st. Sutherland gave his five notes for $414 45, each, running from one to five months, which were endorsed to Dryden for the rent in arrear, and also mortgaged his stock to secure them. He gave his two

notes at twelve and eighteen months for $1,713 87 each, with interest, which were endorsed to the Bank of Commerce, as collateral, by Wroth & Fullerton, for their indebtedness to that institution. These notes, amounting to $5,500 in all, Sutherland paid at maturity, and produced in evidence.

(See Exhibits pp. 42, 61, 62 and 65. Dryden, Int. 3d, and Cross Int. 1st, p. 21. Alnutt, 1st Cross Int. p. 24. Stover, 10th Int. p. 53; 24th Int. p. 56. Kitson, 5th Cross Int. p. 28.)

3. Almost immediately after the purchase of the stock by Sutherland, there was a very great and continuing rise in values, which made the transaction a very profitable one, and gave him a handsome start in business. This rise is testified to by all the mercantile witnesses on both sides, (p. 30, Cross Int. 1st; p. 31, Int. 9th and 10th; p. 32, Cross Int. 5th; p. 35, Cross Int. 2; p. 36, Cross Int. 1st, &c., &c.) Sutherland, meantime, conducted his business with great economy, and at the lowest scale of expense. (Kitson, 22d Int. p. 26.)

4. His subsequent purchases were made with prudence and from small beginnings, always on short time, on his own credit, and without a tittle of evidence that Wroth & Fullerton had any thing whatever to do with them, directly or indirectly. Fitzpatrick sold him after October, 1862, from time to time, $6,137 36. (Int. 3d, p. 57, p. 60.)

Pearce sold him $24,248 91, for himself, (Pearce,) and others, (pp. 58 and 66.)

Cole sold him $2,929 08, (p. 66, p. 31, Int. 3d.)

He had also bought from Jaffray & Stewart, in New York. Stewart & Pollack, in Philadelphia, Neal, S. & R. Moore and others, of Baltimore. (Lee Cross Int. 5 to 11, p. 19. Exhibits, pp. 72, 73.)

All his payments were honestly and punctually met.

5. Sutherland never had any thing to do with the books of Wroth & Fullerton. (See evidence of Stover, their book-keeper, p. 55, Int. 20.)

6. Although Wroth remained with Sutherland, it was only as his clerk and book-keeper. He is proven on all hands to be a popular and capable merchant, a prudent buyer, with many customer friends, and an exceedingly valuable person for Sutherland to employ. There is not only no evidence of his having been any thing more than an employee, but it is affirmatively shown that he did not meddle with the business out of his own department. (Hartman, Cross Int. 2d, p. 22. Kitson, Int, 18, p. 26; Int. 26th and 27th, p. 27. Lee, 13th Int. p. 39. Kitson, 10th Cross Int. p. 47. Stover, 12th Int. p. 53. Fitzpatrick, Int. 14th, p. 48. Pearce, Int. 11th, 12th, 13th, p. 59. Dugan, Int. 6th, p. 60.)

7. The imputation attempted to be derived from Wroth's having solicited his friends to become sureties of Sutherland, is met, not only by the obvious fact that his own livelihood depended on the business of his employer, but by the further facts that he was urged to do so, by Sutherland's solicitor, as a matter of duty, that he promised indemnity to them, on Sutherland's part, and that Sutherland did actually mortgage his stock to secure them. (See agreement at foot of p. 40, and on p. 73. Mortgage, p. 62. Pearce's evidence, 15th Int. p. 59.)

8. The suspicion sought to be attached (as against Wroth & Fullerton,) to the mutilation of their sales book, (Nagle, Int. 13th, 14th, 15th, p. 45,) is removed by the proof that Sutherland had used the sales book (after he purchased the concern) to record his own sales, and that the leaves containing such record were cut out, when the book was given up to the assignee of W. & F. on his demand. (Stover, 16th Cross Int. p. 55.)

9. The irreparable character of the injury done and likely to be done to Sutherland and his mercantile prospects, by the seizure of his goods, and the necessity of his mortgaging them in order to find security on his injunction bond, is fully shown by the proof. (See Int. 9th, 10th, 11th, p. 18. Cole, 6th Cross Int. p. 32. Young, p. 50, Int. 4th. Fitzpatrick, pp. 57 and 58, Int. 8 to 13. Pearce, p. 59, Int. 6th, 7th, 8th.)

10. The combination of the Appellees to commit the wrong in controversy is shown by the facts, that their executions were issued, at the same time, through the same counsel: that they filed identical answers, setting up precisely identical pretexts: that they gave indemnity bonds to the Marshal, and directed him, at the same time, to make the levy in question. (Agreement, p. 73.)

Upon all this evidence, it will be argued by the Appellee, on the facts:

That the purchase of Sutherland from Wroth & Fullerton, was fair and *bona fide*, in all particulars:

That the whole or almost all the goods bought from Wroth & Fullerton, had long before been sold, (see Int. 7th, p. 18,) and that the Appellee had subsequently purchased the goods seized on his own credit, for his own benefit and business, and was the exclusive owner thereof: and

That the levy was without excuse or justification, and would have inflicted irreparable damage on Sutherland, had it not been arrested by the injunction.

Upon the law, it will be argued, that in the case made by the Bill and sustained by the proof, the right of the Appellee to the interposition of Equity, by way of injunction, was clear, on established principles, constantly recognized by this Court. It is not enough to oust the jurisdiction of Equity that there is a remedy at law. That remedy must be as adequate, "practical

and efficacious to the ends of justice and its prompt administration as the remedy in Equity."

Boyce's Ex'x *vs.* Grundy, 3 Peters, 210.
U. S. *vs.* Rowland, 4 Wheaton, 108.
Osborn *vs.* U. S. Bank, 9 Wheat. 841–2.
Barber *vs.* Barber, 21 Howard, 591–2.
Parker *vs.* Winnipiseogee Co., 2 Black, 551.

And this principle applies, whether the injury be to real or personal property, the true and only test of its application being the absence of adequate remedy at law for the wrong done or contemplated.

1 Story's Equity Jurisp., sec. 926.
Hamilton *vs.* Whitridge, 11 Md., 128.
Gilbert *vs.* Mickle, 4 Sandf. Chy. Rep., 357.
Howson *vs.* Gardiner, 7 Vesey R., 308.
Cropper *vs.* Coburn, 2 Curtis, 471.
Gue *vs.* Tidewater Canal, 24 Howard, 262.
Wood *vs.* Rowcliffe, 3 Hare, 308.
Webber *vs.* Sage, 39 N. Hamp., 186.
Warner *vs.* Paine, 3 Barb. Chy., 630.
Marrae *vs.* Brown, 12 La. Ann. Rep., 181.
Ford *vs.* Rigby, 10 Calif., 449.

In this case the remedy at law was wholly inadequate.
Replevin against the Marshal could not have been maintained.
Powell *vs.* Bradlee, 9 Gill & Johns., 274.

And against purchasers would have required a multiplicity of petty suits.

No action of damages would have reached the injury, for it would seem to be clear, that neither a Plaintiff, proceeding in good faith (as these Appellees swear that they proceeded) against

goods which he believed to be the goods of his debtor, nor a Sheriff or Marshal executing such process, could be held liable beyond the mere injury done to the property, or its value if taken.

Pacific Ins. Co. *vs.* Conard, 1 Baldwin, 138.
Conard *vs.* Pacific Ins. Co., 6 Peters., 272–282.
Conard *vs.* Nicoll, 1 Peters., 309, 310.
Thomas *vs.* Isett, 1 Iowa, 470.

But, independently of these authorities, the question has been determined in favor of the right to an injunction in the identical case before the Court, by the Court of Appeals of Maryland. This decision was rendered in an injunction-proceeding in the Circuit Court of Baltimore city, sued out by the Appellant against McCreery and others, who had executions on judgments against Wroth & Fullerton issued out of the State Courts, and levied on the Appellant's goods at the same time with the proceedings involved in this case. (See Record, Kitson Cross Int., 14, p. 47; Young, Int. 4, p. 50. Exhibit 8, p. 62.) The Circuit Court granted the preliminary injunction on the allegations of the bill, identical with those of the bill in this case; and the Court of Appeals affirmed its order, in an opinion of which, as the case is not yet reported, a certified copy is annexed, and which is presumed to be conclusive on the legal point in controversy.

THOS. S. ALEXANDER,
S. T. WALLIS,
Solicitors for Appellant. &c.

Court of Appeals of Maryland.

April Term, 1865,

JAMES McCREERY

vs.

GEORGE A. SUTHERLAND.

James L. Bartol, Justice, delivered the opinion of this Court.

A majority of the Court agree with the Chief Justice in most of the views expressed in his opinion in this case. But an examination of the previous adjudications by this Court to which he has referred, and a consideration of the general principles upon which the jurisdiction of courts of equity in such cases depends, have brought us to the conclusion that upon the allegations in the bill before us the injunction was properly issued.

Such applications are always addressed to the sound discretion of the Court, and every case must depend upon the particular facts and circumstances belonging to it, and alleged on the face of the bill.

The case of Woods & Bridges *vs.* McKenna rested upon the well established jurisdiction of Courts of Chancery over the separate property of *femes coverts*, and did not involve any decision of the question upon the jurisdiction of the Court, or upon the right of the complainant to maintain the bill for injunction, if she had been *sui juris*. The cases of Lewis *vs.*

Levy and Freeland *vs.* Reynolds (16 Md., 85 and 417) were both of them instituted by parties claiming title as grantees under bills of sale or mortgages of personal chattels, not being in possession, and claiming the interference of the Court by way of injunction to protect the same from seizure and sale under execution. This Court held, that the injunction ought not to be issued; and the grounds and reasons upon which those cases rest are too firmly established now to be shaken.

But, in our opinion, the case now before us is clearly distinguishable from those.

Here the bill of complaint alleges that the property which the appellant is about to seize and sell under his execution against Wroth and Fullerton, belongs *bona fide* to the complainant, and constitutes his stock in trade and merchandize; and that the consequence of permitting them to be seized and sold would utterly destroy his trade, credit and business as a merchant, and deprive him of the means of support.

It is said that the injunction ought to be refused because the complainant has full and complete remedy at law. If this were so, we agree that a Court of Equity would have no jurisdiction to grant relief in the case. But to our mind it appears that there are elements of apprehended damage and injury alleged in this bill, not presented in the cases of Lewis *vs.* Levy and Freeland *vs.* Reynolds, and for which the law does not afford adequate and sufficient remedy, either by action of trespass or by replevin. This last remedy would be utterly inadequate, and would require such a multiplicity of suits as would leave the injured party without remedy.

In our opinion the recent case of Hyde *et al. vs.* Elery *et al.*, (18 Md., 496,) in which this Court sustained the injunction, was more analogous to the present. There the injunction was granted as ancilliary to the general relief prayed. But the question before us was upon the right of the complainant to the injunction; and we think the principles upon which that case was determined ought to govern this, and being of opinion that

there was no error in granting this injunction, the order appealed from will be affirmed, and the cause remanded.

Affirmed and remanded.

True copy. *Test.:* GEORGE EARLE, *Clerk*,
Court of Appeals of Md.

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I, Samuel M. Evans, Clerk of the Circuit Court of Baltimore city, do hereby certify that the aforegoing is a full and true copy of the opinion of the Court of Appeals of Maryland, filed in the above cause.

In testimony whereof, I hereto set my hand as Clerk, and affix the seal of the Circuit Court of Baltimore city, this thirteenth day of February, A. D. eighteen hundred and sixty-seven.

SEAL.

SAMUEL M. EVANS, *Clerk*,
Circuit Court of Baltimore city.